

**September 26, 2006**

SUBJECT: **2006-0087** – Appeal of a decision of the Planning Commission for an application on a 6,211 square foot site located at **734 Ashbourne Drive** (near E. Fremont Ave) in an R-0 (Low-Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required.

REPORT IN BRIEF

Existing Site Conditions Existing single-story residence

Surrounding Land Uses

North	Single-Family Residential
South	Single-Family Residential
East	Single-Family Residential
West	Single-Family Residential

Issues Justifications for a variance

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Administrative Hearing Officer's Action Denied Variance application

Planning Commission's Action Denied the appeal, upholding the decision to deny Variance application

Staff Recommendation Deny the appeal and uphold the decision of the Planning Commission to deny the Variance

ANALYSIS

Background

This application was heard before the City Council at the July 18, 2006 meeting (see Attachment 1, RTC 06-223). At that time the Council continued the item to the August 8th meeting so that staff could work with the applicant to come up with cost estimates for alternative building designs. The item was continued again to the August 22nd meeting so that staff and the applicant had sufficient time to gather the requested data. At the August 22nd meeting, the applicant requested a continuance to the September 26, 2006 Council meeting in order to review the design alternatives that staff produced. Staff has not received additional information from the applicant at the time of the writing of this report.

“Reasonable Accommodation” Under the ADA:

The issue of reasonable accommodation, as stated in the Americans with Disabilities Act (ADA), was raised by the applicant at the July 18, 2006 Council meeting. The issue was also raised by the applicant and commented on by the Assistant City Attorney during the Planning Commission’s review of application.

Generally the reasonable accommodation section is applicable when the governing code (SMC in this case) creates a burden for a qualified person with a disability that differs from that imposed on a non-disabled person. But reasonable accommodation is required only where there is no alternative that would comply with the applicable zoning requirements without undue hardship on the disabled individual. In these cases it is appropriate to grant an exemption from the applicable code in order to avoid an undue burden to the property owner. Reasonable accommodation requirements can include modification of zoning regulations where strict application of the regulations would prevent a qualified person with disabilities from having the same ability as others to utilize the property.

In the subject case, the appellants can both meet the applicable zoning requirements and provide an ADA-compliant restroom at a construction cost that is less than if the variance is approved. Therefore the ADA reasonable accommodation requirement does not require any suspension or waiver of the SMC standards in this case.

Alternative Designs and Costs:

Several staff members met with the applicant at their residence to review alternative designs and project costs. The staff members included the Planning Manager, the project planner, and a building inspector with a construction

background. The purpose of the visit was to determine if there were feasible design alternatives to the applicant's proposed plan. Staff did not seek to design the project for the applicant but did seek to determine, on a conceptual basis only, that alternative designs can be achieved while still meeting the needs of the applicant.

Staff estimates the minimum construction valuation of a bedroom and bathroom addition is \$80,000. This estimate includes only the basic construction costs of a new master suite and bathroom and does not include additional costs for the type of construction, such as rooflines, sewer line, structural engineering, etc. The estimate is based on a cost per square foot basis of \$200 per square foot and is applied to all the square footage of the home affected by construction, not simply the new 290 square feet. The following is a summary of alternatives which correspond to the floor plan alternatives in Attachment 4:

Applicant's Proposed Design: Under the applicant's proposal, there is an addition of 290 square feet proposed to an existing 1,798 square foot single-story residence for a total 2,088 square feet (See Attachment 4, page 1 of 3). The scope of the project includes expansion of one of three bedrooms into a master suite and accessible bathroom (five foot minimum turn around area). The addition is proposed to be three feet into the nine foot reducible front yard area.

Although the basic construction valuation for the project is \$80,000, the applicant is proposing a very complicated and expensive roofline over the room addition. The plans show the end gable and load bearing wall pushed out, which will significantly add to the construction costs of the project and will require structural engineering to complete. Staff estimates this project is \$250 per square foot or \$100,000 total cost.

Alternative Design #1: This plan is similar to the applicant's proposal, except the addition meets all setback requirements (See Attachment 4, page 2 of 3). The addition is now 260 square feet and still contains an accessible bathroom. The square footage that was previously in the setback area has been pushed further into the rear yard area and reduced under this scenario.

The basic construction valuation for this alternative is also \$250 per square foot due to similarly complicated rooflines or approximately \$95,000 total cost. The reduction in cost is due primarily to the reduction of the area of addition over the propose project. The construction of the roof is still complicated and expensive, although the rear walls have been simplified to some extent. The small lemon tree must be removed or moved under this scenario since it is in the area of addition.

Alternative Design #2: This plan is also similar to the applicant's proposal, except the addition meets all setback requirements, the roofline/walls have been tremendously simplified, and the bathroom sewer line has been shortened over the original proposal (See Attachment 4, page 3 of 3). The floor plan layout has been simplified as well. This addition would be 280 square feet and would still contain an accessible bathroom.

Staff estimates the cost for this alternative is \$200 per square foot or approximately \$105,000 total cost. From a design review perspective, this option will appear less like an addition to the existing home and more like the original design. The small lemon tree in the rear yard must be removed or moved under this scenario since it is in the area of addition.

Basic Summary

Alternative	Features	Costs
Applicant's Proposal	<ul style="list-style-type: none"> • 290 sf room • accessible bathroom • 120 sf bedroom #2 	\$100,000
Alternative #1	<ul style="list-style-type: none"> • 260 sf room • accessible bathroom • 110 sf bedroom #2 	\$95,000
Alternative #2	<ul style="list-style-type: none"> • 280 sf room • accessible bathroom • 130 sf bedroom #2 	\$105,000

Alternatives

1. Deny the appeal and uphold the decision of the Planning Commission to deny the Variance.
2. Grant the appeal and approve the Variance with attached conditions.
3. Grant the appeal and approve the Variance with modified conditions.

Recommendation

Staff recommends Alternative #1.

Staff cannot make the first required finding regarding exceptional or extraordinary circumstances or conditions that apply to this property due to the parcel's size, shape, use, topography, location, or surroundings. The

average parcel size in the surrounding neighborhood is 6,600 square feet, while the subject parcel is 6,211 square feet. Both measures are consistent with SMC standards for the R-0 Zone which specifies 6,000 square feet minimum parcel sizes. The average parcel width is 65 feet in the neighborhood and the subject parcel is 66 feet wide. SMC requires at least 62 feet for corner lots in the R-0 Zone. The site is rectangular and has no topographical features. Therefore, the parcel's shape, size, or topography does not deprive the property owner of a privilege enjoyed by similar property owners.

Staff also cannot find that there are any physical hardships on this property that would allow this finding to be made. This includes the grade change, which is a common situation in Sunnyvale. Staff also does not find the sewer lateral issue to be a unique circumstance or condition that applies only to this property, since it is not an uncommon situation, although it does create a more expensive project for the applicant.

In addition, staff does not find that there is a financial hardship for this property owner. Attachment 4 demonstrates that there are several other designs that would achieve the same square footage and floor plan while reducing overall construction costs.

Staff is able to make the second Variance finding that granting the application will not be materially detrimental to the public welfare. Staff believes the addition will not negatively impact the neighborhood in any measurable sense.

Staff cannot make the third finding that granting the Variance will not grant a special privilege not enjoyed by other surrounding property owners. Approving this request would allow a significant majority of the homes in the neighborhood to make the same findings for reducing the front yard setback, due to similar parcel sizes, lot width, and siting of homes.

Reviewed by:

Trudi Ryan, Planning Officer

Prepared by: Steve Lynch, Project Planner

Reviewed by:

Robert Paternoster
Director, Community Development Department

Approved by:

Amy Chan
City Manager

Attachments:

1. RTC (06-223) from July 18, 2006 meeting, includes Attachments A-I.
2. City Council minutes from July 18, 2006 meeting
3. Additional information submitted by the applicant at the July 18, 2006 Council meeting
4. Site Plan Alternatives

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district.

Staff is not able to make this finding because the site meets all lot dimensional standards for the R-0 Zoning district. The parcel is a standard shape and has no distinguishing topographical features.

The applicant has not demonstrated that extraordinary circumstances apply to this site or that the use would deprive him of a privilege enjoyed by others. Staff was not able to make this finding based upon the above discussion about the parcel configuration. Therefore, staff does not find that the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.

Staff is able to make this finding because approving this request would not be detrimental to the neighborhood.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Staff is not able to make this finding because approving this request would grant a setback not enjoyed by other properties in the vicinity and may also allow a significant majority of the homes in the neighborhood to make the same findings for expansion of the home, due to similar parcel sizes, garage sizes, home sizes, and siting of homes.

Recommended Conditions of Approval if the Variance is Granted

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The Variance shall be null and void two years from the date of approval by the final review authority if the approval is not exercised.
- B. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- C. The Conditions of Approval shall be reproduced on the cover page of the plans submitted for a Building permit for this project.
- D. Obtain building permits for the proposed plan.

2. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. Final exterior building materials and color scheme are subject to review and approval by the Director of Community Development prior to issuance of a building permit.
- B. Roof material shall match the existing home or if replaced entirely, be 50-year dimensional composition shingle or equivalent warranty material providing texture and shadow effect, or as approved by the Director of Community Development.

**July 18, 2006**

SUBJECT: **2006-0087** – Application on a 6,211 square foot site located at **734 Ashbourne Dr** (near E. Fremont Ave) in an R-0 (Low-Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required.

REPORT IN BRIEF

Existing Site Conditions Existing single-story residence

Surrounding Land Uses

North Single-Family Residential

South Single-Family Residential

East Single-Family Residential

West Single-Family Residential

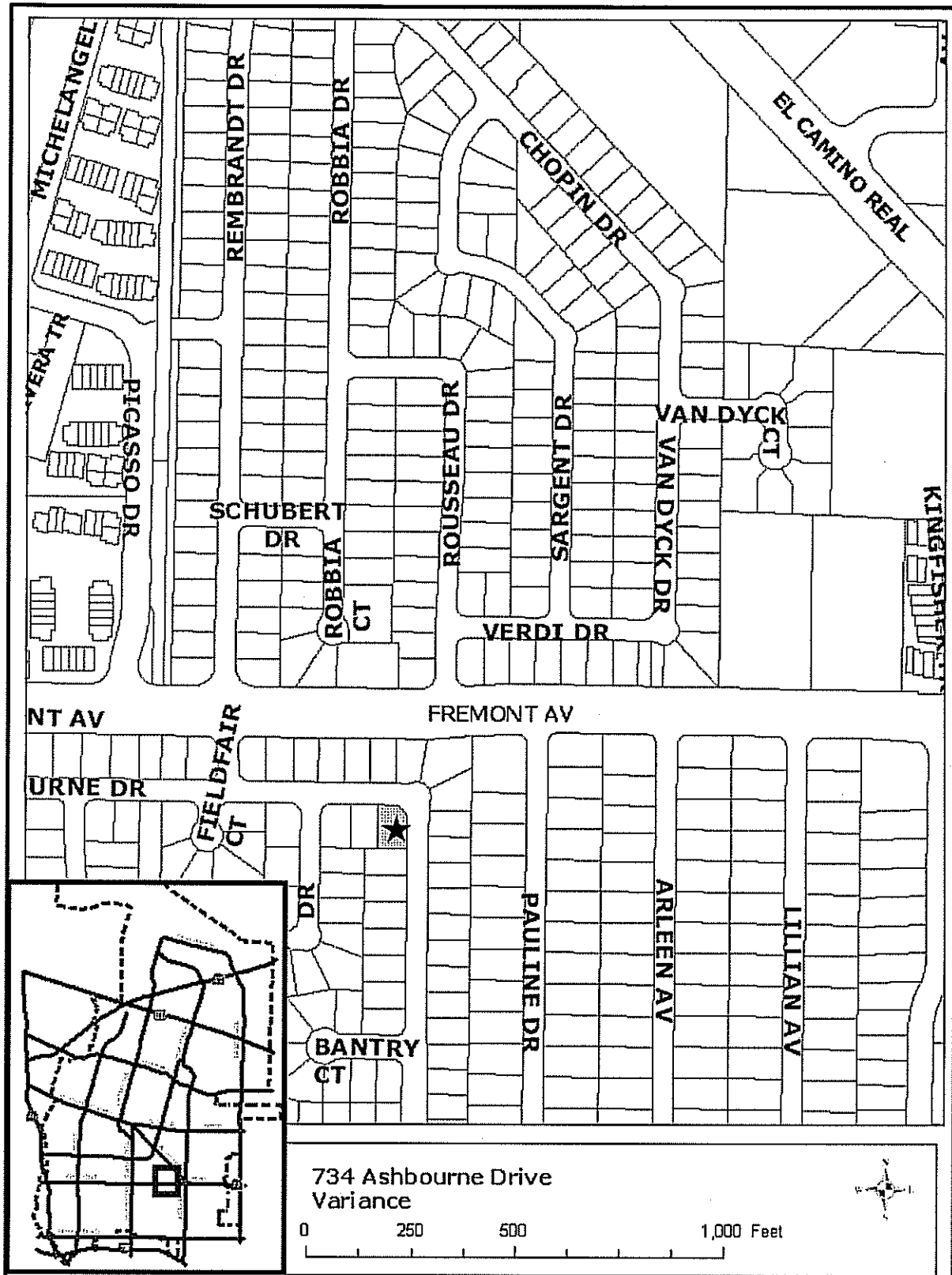
Issues Justifications for a variance

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Administrative Hearing Officer's Action Denied Variance Application

Planning Commission's Action Denied the appeal

Staff Recommendation Deny the appeal and uphold the decision to deny the Variance



PROJECT DATA TABLE

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
General Plan	Residential Low Density	Same	Residential Low Density
Zoning District	R-0	R-0	R-0
Lot Size (s.f.)	6,211	Same	6,000 min.
Lot Width (ft.)	52	Same	57 min.
Gross Floor Area (s.f.)	1,798	2,088	2,795 without public hearing
Lot Coverage (%)	29%	35%	45% max.
No. of Buildings On-Site	1	Same	1
Building Height (ft.)	14'6"	Same	30 feet max.
No. of Stories	1	Same	2 max.
Setbacks (facing prop.)			
• Front (ft.)	20'	Same	20' min.
• Right Side (ft.)	6'	6'	4' min.
• Left Side (ft.)	9'	6' (Total 12')	9' min. (Total 12')
• Rear	20'	10'	10' min.
• Rear Encroachment (%)	0	11.3%	25% max.
Parking			
• Total Covered Parking	1	Same	2 min.
• Total Uncovered Parking	2	Same	2 min.

★ Starred items indicate variance from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The applicant is proposing an addition of 290 square feet to an existing 1,798 square foot single-story residence. The addition is proposed in the rear and reducible front yard areas, and the house will total 2,088 square feet when completed. The scope of the project includes expansion of one of three bedrooms into a master suite. The proposed home will have three bedrooms, a family room, living room, kitchen, and a two-car garage.

As part of the project, the applicant is requesting that a portion of the new addition be constructed six feet from the property line, where nine feet is the minimum allowed by Sunnyvale Municipal Code (SMC). This street side yard is considered a front yard area and requires a 20-foot setback but is allowed to be reduced under SMC 19.34.040 to a minimum of nine feet. The birch trees in the area of the addition are proposed to be removed as part of this project.

Background

Previous Actions on the Site: This application was reviewed at the March 2, 2006 Administrative Hearing and was denied. The applicant appealed the decision to the Planning Commission. The Commission heard the application of April 10, 2006 and continued the item for additional information to the April 24, 2006 meeting, where it was denied 6-0. There are no other planning related permits that have been filed since the residence was built in 1964.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions. Class 1 Categorical Exemptions include modifications to existing structures.

Variance

Site Layout: The existing 6,211 square foot parcel is a rectangular lot with the home situated near the center of the lot. The existing home meets all current setback requirements with a six-foot side yard, 21-foot front yard, 12-foot street side reducible front yard, and a 24-foot rear yard. The proposed addition will extend the structure into the reducible front yard area by six feet. (See Attachment E).

The subject parcel is 66 feet wide and 96 feet deep. The lot width meets standards for the R-0 Zoning district since 62 feet is the minimum required for corner lots in this zone. The lot size also meets current SMC standards since 6,000 square feet is the minimum parcel size in the R-0 Zone. Most of the parcels in the surrounding area are similar with 6,000 square feet as the average size. The subject site does not have an irregular configuration, and no physical constraint exists on site (see the Assessor Parcel Map of the neighborhood in Attachment D). The following table shows the parcel sizes for lots in the immediate vicinity.

	Property Address	Square Footage of Lot	Lot Widths
★	721 Ashbourne	6,120 s.f.	65 ft.
★	724 Ashbourne	7,513 s.f.	78 ft.
	725 Ashbourne	6,550 s.f.	65 ft.
	727 Ashbourne	6,050 s.f.	60 ft.
	729 Ashbourne	6,000 s.f.	62 ft.
★	730 Ashbourne	6,329 s.f.	66 ft.
	731 Ashbourne	6,000 s.f.	60 ft.
	732 Ashbourne	6,204 s.f.	64 ft.
	733 Ashbourne	6,200 s.f.	62 ft.
★	734 Ashbourne	6,211 s.f.	66 ft.

Property Address	Square Footage of Lot	Lot Widths
735 Ashbourne	6,466 s.f.	65 ft.
737 Ashbourne	11,558 s.f.	---
1318 Flicker	7,500 s.f.	77 ft.
1324 Flicker	6,191 s.f.	62 ft.
1329 Flicker	6,208 s.f.	64 ft.
1330 Flicker	6,192 s.f.	62 ft.
1335 Flicker	6,208 s.f.	64 ft.
1336 Flicker	6,193 s.f.	62 ft.
1341 Flicker	6,208 s.f.	64 ft.
1342 Flicker	6,194 s.f.	62 ft.
Average	6,600 s.f.	65 ft.

★ Indicates corner lots

Architecture: The proposed addition will match the stucco material that exists on three sides of the home (excluding the front). The addition will also match the existing composition roof material.

The following Guidelines from the Single-Family Design Techniques were considered in the analysis of the project architecture:

Design Policy or Guideline (Architecture)	Comments
<i>2.2 Basic Design Principles Respect the scale, bulk, and character of homes in the adjacent neighborhood.</i>	The addition would occur in the rear and reducible front yards of the existing single-story house. The addition generally respects the existing scale, bulk, and character of the house as seen from the surrounding neighborhood.
<i>3.1 Design Techniques Design homes to respect their immediate neighbors.</i>	
<i>3.1(D) Design Techniques Where significant additions to existing homes are planned, it is generally better to place those additions at the rear of the house or at the side.</i>	The proposed addition is not significant in terms of new square footage versus existing square footage.

Parking/Circulation: As required by Sunnyvale Municipal Code, the site provides a two-car garage and two uncovered parking spaces in the driveway.

Compliance with Development Standards/Guidelines: The site currently meets all standard requirements for the R-0 Zoning District. The requested

Variance would allow an exception to the reducible front yard setback (six feet where nine feet is required).

Expected Impact on the Surroundings: The proposed addition would have a minimal impact to the surrounding neighborhood. If the Variance is approved, a precedent would be set and there could be an increase in Variance requests in the neighborhood, although staff does not believe this scenario would come to fruition. The cumulative effect of structures located closer to the street could have a negative impact on the streetscape and reduce visual open space in the area.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> Published in the <i>Sun</i> newspaper Posted on the site 38 notices mailed to adjacent property owners and residents of the project site 	<ul style="list-style-type: none"> Posted on the City of Sunnyvale's Website Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> Posted on the City's official notice bulletin board City of Sunnyvale's Website Recorded for SunDial

Administrative Hearing: On March 2, 2006, the Administrative Hearing Officer considered the Variance application and denied the request. After presentations by staff and the applicant, the Hearing Officer stated that the required findings could not be made and that granting the Variance would constitute a special privilege not enjoyed by surrounding property owners. (See Attachment F for Administrative Hearing Minutes). The applicant appealed this decision on March 8, 2006.

Planning Commission Hearing (April 10th): This application was heard before the Planning Commission at the April 10, 2006 meeting. At that time the Commission continued the item to the April 24th meeting so that staff could research the following two issues: 1) the residence has a unique circumstance since it has been raised out of a flood zone, and 2) the sewer connection to the home requires the addition to be located on the side of the residence. The specific issues discussed at the hearing are discussed below:

Flood Zone Information

A majority of the homes in the Ashbourne and Flicker Way neighborhood are in the AO flood zone (depths of one to three feet). The subject home was raised out of the flood zone when it was constructed by raising the grade elevation of the parcel. The parcel was raised by approximately three to four feet. Since that time the property owner applied and received approval to have the residence removed from the AO flood zone.

The grade difference in the site has little effect on construction techniques and costs required to build the addition. If the addition is placed in the rear of the existing structure, then no grade change is required. If the addition is placed on the side (as proposed by the applicant) the elevated grade will be required to be extended a short distance towards the street in order to create a level area for the addition.

Sewer Connection

The existing sewer lateral is connected into the City main line on the Ashbourne side of the residence. All sewer lines are required under the Uniform Plumbing Code to maintain certain gradients (1/8" over 1', rise over run) leading down towards the street away from the house. Typically the existing sewer lateral exceeds the minimum gradient requirements, making a tie-in to the existing line possible. In these cases, the tie-in occurs under the floor of the home and within the existing foundation framework.

In less common circumstances the existing sewer lateral cannot be extended to accommodate a new drain and a sewer line is required to be connected into the lateral closer to the street. In these cases, a second lateral must be trenched underneath the foundation of the home before it can be tied into the existing line leading to the City sewer.

When a second lateral is required to be trenched under the foundation, it becomes more expensive than a standard connection within the foundation walls. Although there is an added cost for this type of project, it is not an uncommon situation for a homeowner in Sunnyvale.

Planning Commission Hearing (April 24th): This application was heard again before the Planning Commission at the April 24, 2006 meeting. At that time the Commission discussed the issue of the sewer connection as well as alternative configurations for the home addition. The Commission ultimately recommended to deny the appeal, stating that they were unable to make the required findings and that there are alternative designs for the addition that would not require a variance from setback requirements.

Conclusion

Applicant's Justification: The applicant has addressed the three required findings for a Variance in Attachment C – Applicant's Letter of Justification. The applicant contends the following:

- Other similar corner lots in the neighborhood have had similar six-foot side yard setback Variances approved.
- The proposed addition would not be detrimental to the public welfare since the addition is not in the vision triangle and the exterior architecture will remain the same.
- Granting the Variance would not grant a special privilege to the applicant, which would not also be enjoyed by the neighbors.

The applicant has also stated the following reasons for granting of the variance:

- Other parcels in the neighborhood are not raised out of the flood zone; therefore this parcel has a unique circumstance relative to other properties in the vicinity.
- The proposed addition to accommodate an accessible bathroom would require a more expensive sewer line connection that would be a hardship to the property owner.
- Granting the Variance would not grant a special privilege to the applicant, which would not also be enjoyed by the neighbors.

Discussion: Staff cannot make the first finding regarding exceptional or extraordinary circumstances or conditions that apply to this property due to the parcel's size, shape, use, topography, location, or surroundings. The average parcel size in the surrounding neighborhood is 6,600 square feet, while the subject parcel is 6,211 square feet. Both measures are consistent with SMC standards for the R-0 Zone which specifies 6,000 square feet minimum parcel sizes. The average parcel width is 65 feet in the neighborhood and the subject parcel is 66 feet wide. SMC requires at least 62 feet for corner lots in the R-0 Zone. The site is rectangular and has no topographical features. Therefore, the parcel's shape, size, or topography does not deprive the property owner of a privilege enjoyed by similar property owners.

In addition, staff does not find that there are any physical hardships on this property that would allow this finding to be made. This includes the grade change, which is a common situation in Sunnyvale. Staff also does not find the sewer lateral issue to be a unique circumstance or condition that applies only to this property, since it is not an uncommon situation, although it does create a more expensive project for the applicant.

Staff is able to make the second Variance finding that granting the application will not be materially detrimental to the public welfare. Staff believes the addition will not negatively impact the neighborhood in any measurable sense.

Staff cannot make the third finding that granting the Variance will not grant a special privilege not enjoyed by other surrounding property owners. Approving this request would allow a significant majority of the homes in the neighborhood to make the same findings for reducing the front yard setback, due to similar parcel sizes, lot width, and siting of homes.

There are some residences in the area that do not conform to current SMC setbacks. Most of these nonconforming setbacks were created when the homes were initially constructed in the early 1960's. The applicant refers to several of these in their letter of justification and photos, but these non-conforming setbacks are a part of the original building permit in accordance with the Municipal Code at that time. The following table shows all Variance applications submitted to the City in the neighborhood. All of the following were approved.

Property Address	Date	Variance Description
721 Ashbourne	1/13/2003	Encroachment of single-story addition into 40-foot vision triangle.
666 Ashbourne	6/16/1982	Exceed allowable lot coverage
717 Ashbourne	9/1/1973	Interior Side yard setback (5' second story where 7' was required)
1342 Flicker	7/16/1980	Side yard setback
1390 Flicker	1/13/1975	Exceed allowable lot coverage 39% where 35% was max allowed)

Findings: Staff is recommending denial for this application because the Findings (Attachment A) were not made. However, if the City Council is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B) for the project be attached to the approval.

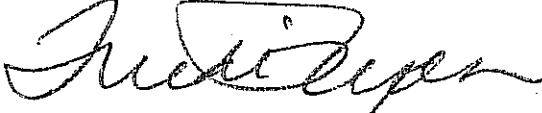
Alternatives

1. Deny the appeal and uphold the decision to deny the Variance.
2. Grant the appeal and approve the Variance with attached conditions.
3. Grant the appeal and approve the Variance with modified conditions.

Recommendation

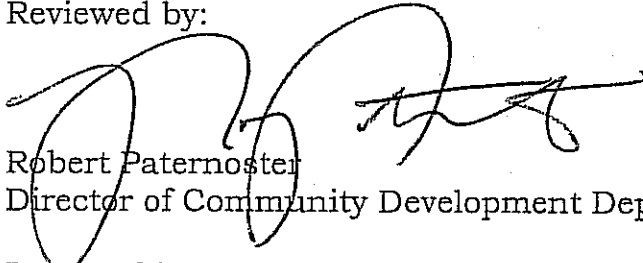
Recommend Alternative 1.

Reviewed by:



Trudi Ryan, Planning Officer

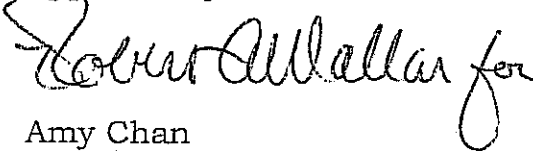
Reviewed by:



Robert Paternoster
Director of Community Development Department

Prepared by: Steve Lynch, Project Planner

Approved by:



Amy Chan
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Applicant Letter of Justification
- D. Assessor Parcel Map
- E. Site and Architectural Plans
- F. Draft Administrative Hearing meeting minutes from March 2, 2006
- G. Draft Planning Commission meeting minutes from April 10, 2006
- H. Draft Planning Commission meeting minutes from April 24, 2006
- I. Additional information submitted by the applicant.

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district.

Staff is not able to make this finding because the site meets all lot dimensional standards for the R-0 Zoning district. The parcel is a standard shape and has no distinguishing topographical features.

The applicant has not demonstrated that extraordinary circumstances apply to this site or that the use would deprive him of a privilege enjoyed by others. Staff was not able to make this finding based upon the above discussion about the parcel configuration. Therefore, staff does not find that the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.

Staff is able to make this finding because approving this request would not be detrimental to the neighborhood.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Staff is not able to make this finding because approving this request would grant a setback not enjoyed by other properties in the vicinity and may also allow a significant majority of the homes in the neighborhood to make the same findings for expansion of the home, due to similar parcel sizes, garage sizes, home sizes, and siting of homes.

Recommended Conditions of Approval if the Variance is Granted.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The Variance shall be null and void two years from the date of approval by the final review authority if the approval is not exercised.
- B. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- C. The Conditions of Approval shall be reproduced on the cover page of the plans submitted for a Building permit for this project.
- D. Obtain building permits for the proposed plan.

2. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. Final exterior building materials and color scheme are subject to review and approval by the Director of Community Development prior to issuance of a building permit.
- B. Roof material shall match the existing home or if replaced entirely, be 50-year dimensional composition shingle or equivalent warranty material providing texture and shadow effect, or as approved by the Director of Community Development.

VARIANCE JUSTIFICATIONS

Justifications must be submitted by the applicant with all Variance applications. Use this sheet or a separate sheet of paper to complete all of the three statements below.

In granting a Variance, all of the following justifications must be made by the Planning Commission or the Administrative Hearing Officer:

19.84.050. Findings.

(a) A Variance from the requirements of this title, except for the height of a ground sign, shall be approved only upon a showing by the applicant that:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

The property is a corner lot on Ashbourne and Flicker and the accompanying photos will show that other property owners on this street have completed remodels that also reveal a 6 foot side yard setback. Granting this variance would allow the home owners to enjoy the same privilege of expansion as their neighbors, allowing the same overall square footage consistent with the neighborhood.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

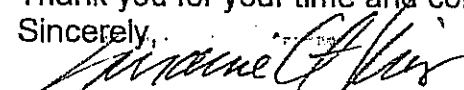
Granting this variance would not be detrimental to the public welfare or property since the vision triangle for traffic is maintained and the exterior look of the addition will match the existing house and the general ranch look of the existing neighborhood. This does not inhibit the use or enjoyment of any home in the immediately zoned area.

3. Upon granting of the Variance the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

We do not believe there are any special privileges being granted, but instead the home owners enjoyment and use of the property will be brought up to par with their neighbors.

Thank you for your time and consideration in this matter.

Sincerely,



Lorraine Riess (for Tony Maciejowski and Lorraine Guerrero, owners)
Professional, AIBD

If you need assistance in answering any of these justifications, contact the Planning Division staff at the One Stop Permit Center.

734 Ashbourne Drive
Sunnyvale, CA 94087
March 8, 2006

Planning Commission
Dept. of Community Development
456 West Olive Ave.
Sunnyvale, CA 94088

To whom it may concern,

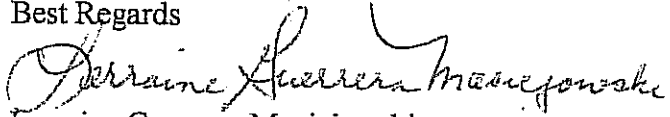
We are requesting a variance from Sunnyvale Municipal code section 19.34.040 to allow a six-foot set back where nine feet is required from the property line on a corner lot. The addition would have a setback of 17 feet from the face of the curb instead of 20 feet.

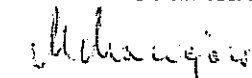
Some of the corner lots in the neighborhood do not meet the current set back requirements and this request for a variance would match the set backs of other corner lots in the neighborhood. Granting a variance would not set a precedence for a majority of homes. Therefore, the cumulative effect of structures closer to the street would not have a negative impact on the streetscape and would not reduce the visual open space in the area.

In addition, the exceptional topography of the parcel is causing a hardship in designing the placement of the sewer line for our new bathroom. The elevation of the home on the Flicker Way side of the parcel is approximately 4 feet higher than the street. This situation is depriving us of a privilege enjoyed by similar property owners, since surrounding parcels are at street level and 734 Ashbourne/Flicker is not.

The Sunnyvale planning staff has noted in the documents prepared at the administrative hearing that the proposed addition would have a minimal impact to the surrounding neighborhood. It was stated at the meeting that the design of the addition was done very well to blend in and complement the existing home. Therefore, we are asking that the variance be granted.

Best Regards


Lorraine Guerrera Maciejowski

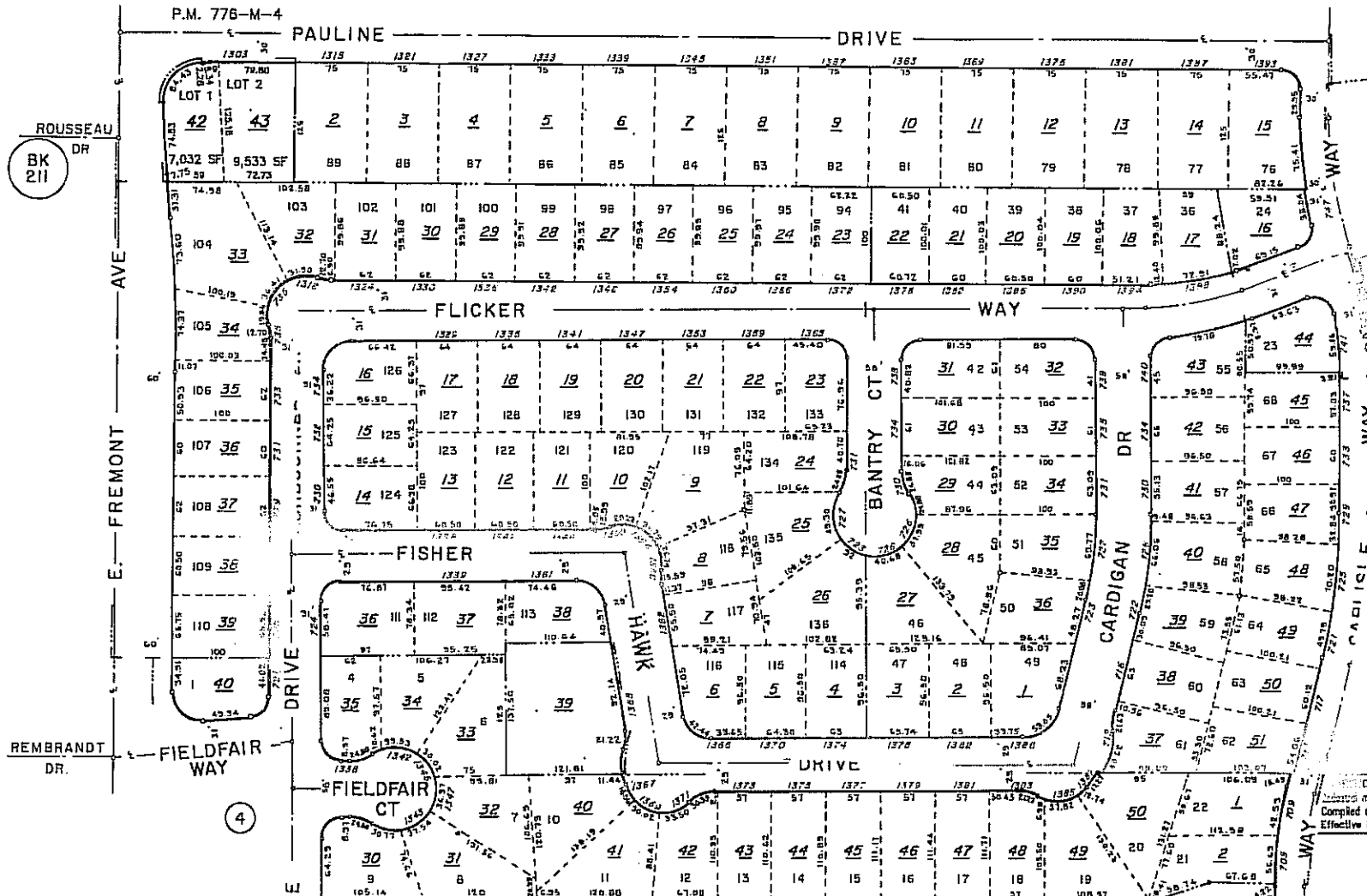

M.A. Maciejowski

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

8

BOOK 309 PAGE 7

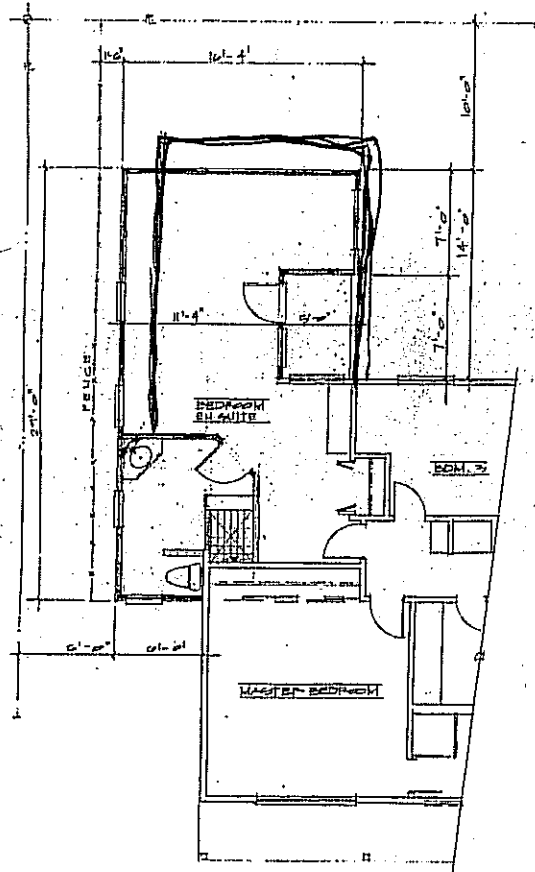
TRACT N° 816
FREMONT MANOR ADDITION N° 2



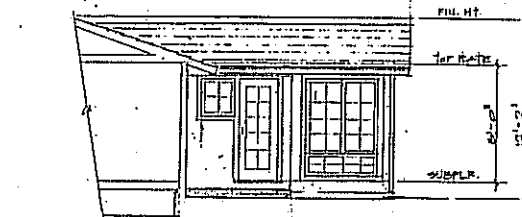
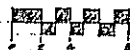
TRACT N° 3181
GREENTREE
UNIT N° 1

ATTACHMENT
Page 1

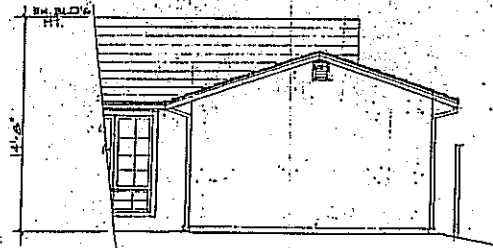
DE E. STONE - ASSESSOR
Map for assessment purposes only
Compiled under R. & T. Code, Sec. 207
Effective Roll Year 2005-2006



proposed floor plan

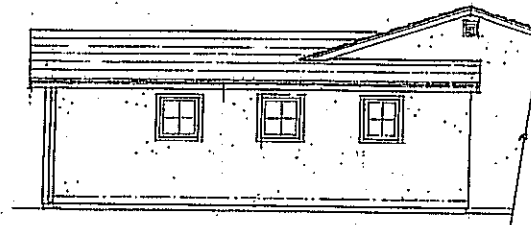


west elevation



south elevation

FINISH MATERIALS
 ROOFING: SHINGLES
 SILL: 4" x 6" SHADOW GRAY
 S. MATCH EXISTING
 FENCE: CLEAR HEART
 REDUCED TO MATCH EXIST.
 BRICKWORK: 2" x 8"
 WHITE
 SIDING: SHINGLES
 FRONT WHITE: RM-14
 TO MATCH EXISTING
 TRIM: 2" x 4" MOLDING
 WHITE SHADOW GRAY
 TO MATCH EXISTING
 WINDOWS: ANDERSON
 SLIDERS W/ SHD: WHITE
 TO MATCH EXISTING



east elevation

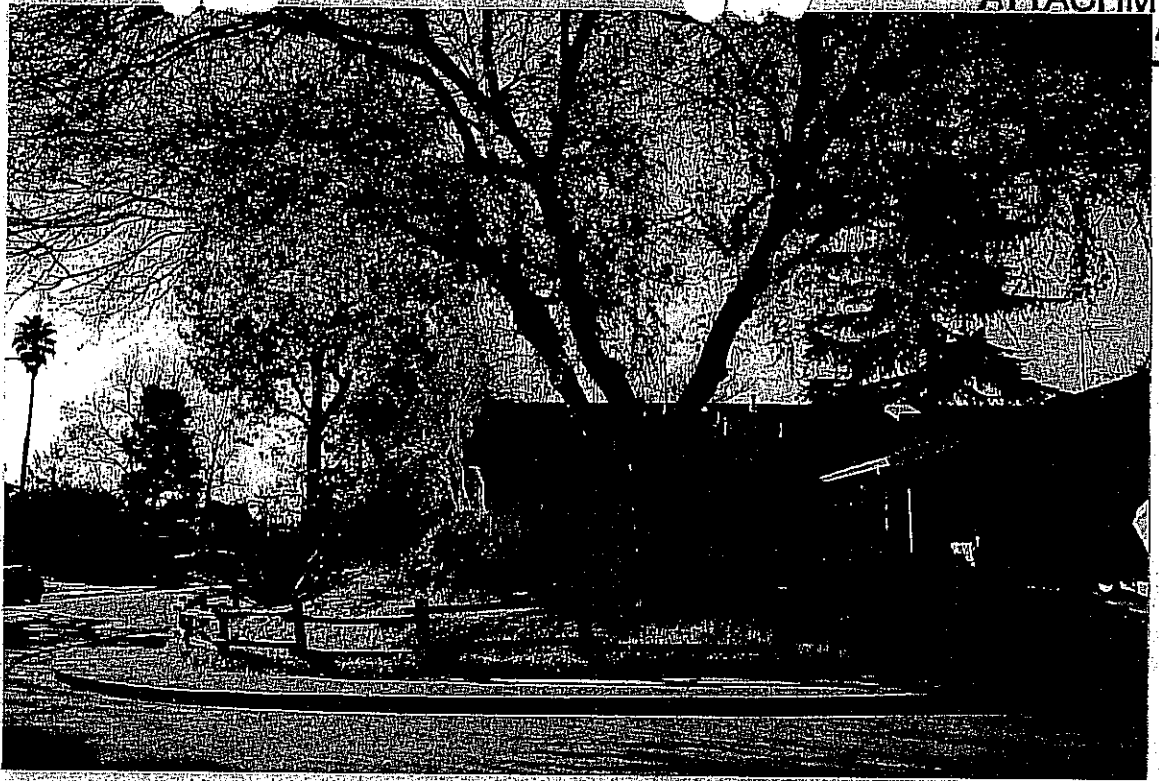
ATTACHMENT
 Page 5 of 6

REVISIONS	BY
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100	10/1/05



LORRAINE PRIES
 RESIDENTIAL ARCHITECT
 408 S. 2ND ST.
 SUITE 104
 MINNEAPOLIS, MN 55401
 612.338.1041
 612.338.1042

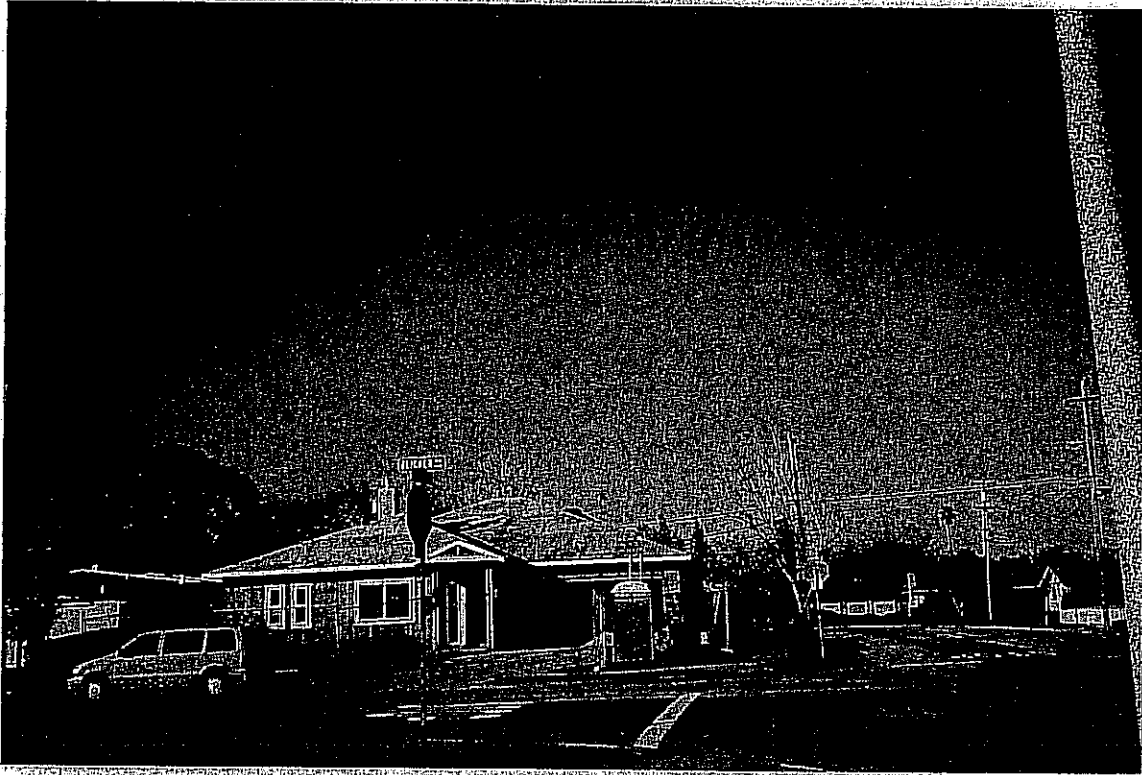
DATE: 10/1/05
 DRAWN BY: L.P.
 CHECKED BY: L.P.
 APPROVED BY: L.P.

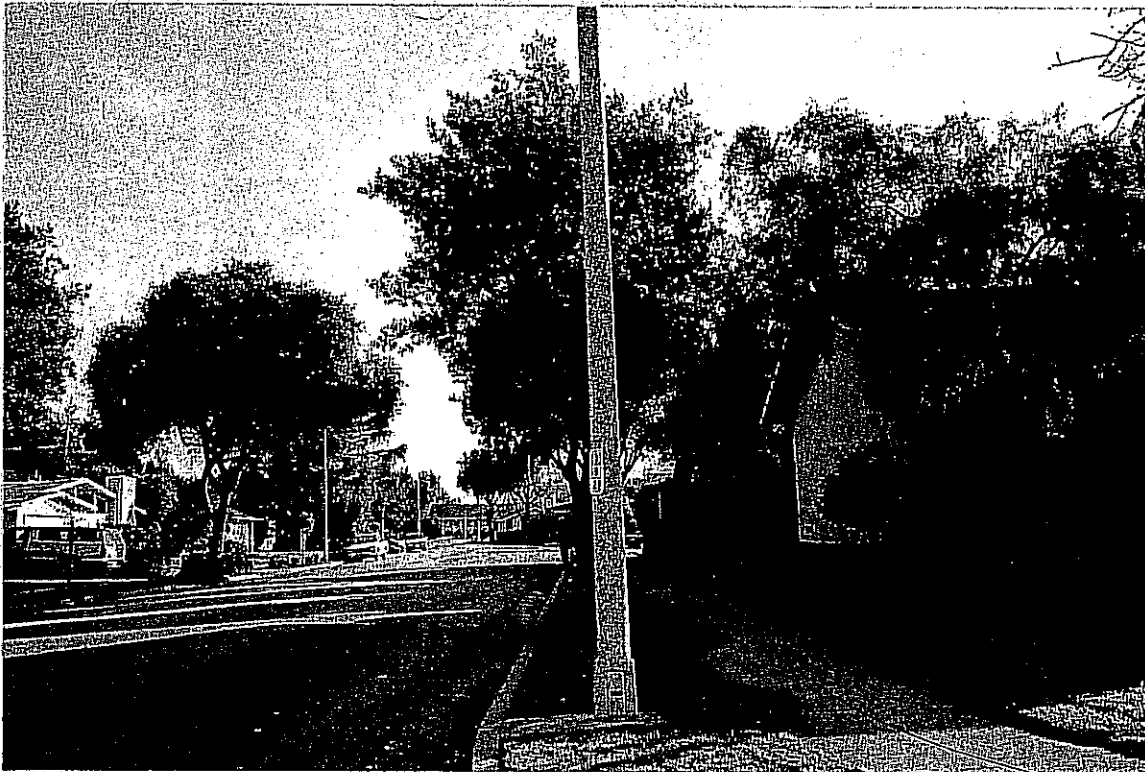


FRONT VIEW



SIDE VIEW (FLICKER WAY)







**CITY OF SUNNYVALE
ADMINISTRATIVE HEARING**

ATTACHMENT F
Page 1 of 2

MINUTES

Thursday, March 2, 2006

2006-0087 – Application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016)

In attendance: Lorraine Guerrero, Applicant; Robert Harms, Neighbor; Andrew Miner, Administrative Hearing Officer; Steve Lynch, Project Planner; Luis Uribe, Staff Office Assistant.

Mr. Andrew Miner, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Mr. Miner announced the subject application.

Steve Lynch, Project Planner, stated that the applicant is proposing an addition of 290 square feet to an existing 1,798 square foot single-story residence. The addition is proposed in the rear and reducible front yard areas, and the house will total 2,088 square feet when completed. The scope of the project is to expand one of three bedrooms into a mater suite. The proposed home will have three bedrooms, family room, living room, kitchen, and a two-car garage.

As part of the project, the applicant is requesting that a portion of the new addition be constructed six feet from the property line, where nine feet is the minimum allowed by Sunnyvale Municipal Code (SMC). This street side yard is considered a front yard area and requires a 20-foot setback but is allowed to be reduced under SMC 19.34.040 to a minimum of nine feet. Staff could not make 2 of the 3 Findings. Therefore staff does not recommend approval.

Mr. Miner opened the public hearing.

Lorraine Guerrero, Applicant, received and reviewed a copy of the staff report. The applicant gave a brief statement on other properties in the neighborhood that have constructed a similar addition. Ms. Guerrero noted that the reason for this addition is to accommodate a handicapped person.

Mr. Miner stated that in order to pass a variance the project has to meet certain Findings. Mr. Miner asked the applicant if there was something unusual about the property that would prohibit the addition meeting the required set-back. The applicant stated that the addition is to help accommodate a person with special needs.

2006-0087 734 Ashbourne Dr.

Administrative Hearing

March 2, 2006

Page 2 of 2

Robert Harms, Neighbor, stated that the corner lot is a hazard as far as the field of view is concerned.

Lorraine Riess, Designer, stated that Mr. Harms statements were related more to parking issues.

Mr. Miner closed the public hearing.

Mr. Miner denied the application due to the inability to meet the Findings.

Mr. Miner stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:34 p.m.

Minutes approved by:



Andrew Miner, Principal Planner

PLANNING COMMISSION MINUTES OF APRIL 10, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL

Gerri Caruso, Principal Planner, presented the staff report. Ms. Caruso said that staff is unable to make the findings to approve the requested variance and is recommending the Planning Commission uphold the decision of the Administrative Hearing Officer and deny the variance.

Chair Hungerford opened the public hearing.

Lorraine Guerrero Maciejowski, appellant, said the proposed plans are for an addition that would have a setback of 17 feet from the face of the curb instead of 20 feet. Ms. Maciejowski said she spoke with Teresa Zarrin, Associate Planner in the Planning Division and that she indicated that the home is zoned R-0 (Residential Low Density) requiring only an 8 foot setback. Ms. Maciejowski asked staff for clarification on what the setback requirement is. She commented that some of the corner lots in the neighborhood do not meet the setback requirements and this request for a variance would actually match some of the other corner lots. She said the proposed new addition would be built on the side and rear of the home and would be almost hidden due to a fence and landscaping. Ms. Maciejowski shared three pictures of other corner lots in the neighborhood that do not meet the setback requirements as the variances were "grandfathered in." She said the addition would not have a negative impact on the streetscape and would not affect the visual open space in the area. She also provided letters from two neighbors expressing support for the project. She shared a picture of a nearby house that is similar to the fence and landscaping that they plan to provide. She said that Andrew Miner, the Administrative Hearing officer, said at the Administrative Hearing that the design of the plan blended in and complimented the home. She said this addition is to accommodate the need to make extra room for a person in the home who has limited mobility.

Mieczyslaw Maciejowski, appellant, mentioned a few things regarding the topography of the property. He said their site is a corner lot and that there are a couple of storm drains that make the corner spot lower. He said their home is about five feet above the low spot and a few years ago they had FEMA survey the property so they could request an exemption from the flood insurance as their house is higher than the flood level. He said because of this elevation there may be an issue in getting the sewer line hooked up. Mr. Maciejowski said if this

variance is not approved it may be difficult and expensive to redesign the project and sewer line hook up and that the project may no longer be economically feasible.

Comm. Babcock referred to Ms. Maciejowski statement regarding a fence that would screen the building and asked staff what the setback would be for a fence. Ms. Ryan said a six foot tall fence may be placed on the property line, a seven foot tall fence could be placed on the property line with proper noticing to the neighbors that this has been proposed and any fence taller than seven feet would require a Use Permit that would go to Administrative Hearing. Comm. Babcock asked where the fence would be in relation to the addition. Ms. Ryan said she does not think a specific application for a fence has been submitted. Ms. Caruso said the setback of 6 feet would be measured from the property line the fence could be on property line so the fence could feasibly be six feet from the addition if approved.

Comm. Sulser commented to staff about the grade differential on the site and that the differential is part of the appellant's justification for requesting the variance. He asked staff how common it is for there to be grade differentials for sites in Sunnyvale. Ms. Ryan said Sunnyvale is primarily flat, but that it is not unusual for the houses to be graded up from the streets and sidewalks, especially on corner lots.

Comm. Klein asked staff if the grade differential makes this site special in any way. Ms. Caruso said the difference in elevation does not effect the variance or the ability to do the addition.

Chair Hungerford referred to Ms. Maciejowski request for clarification on the setback requirement and asked staff to respond. Ms. Ryan said without being present during the conversation she could only guess that possibly the Planner was not clear that the setback in question was referring to the street side of the property. Ms. Ryan confirmed that the required setback in question is a 9 foot minimum. Ms. Ryan explained how the setbacks are defined for corner lot properties.

Ms. Maciejowski said she felt that Ms. Zarrin was quite clear the zoning was R-0 and 8 feet. The appellant provided a photo for the Commissioners to view and said the fence is 11 feet 3 inches from the face of the curb. She also said she feels like the site has a unique grade and that it would be a financial hardship to redesign the sewer line and home in a different location. She said that the fence and landscaping would be similar to the neighbor's fence and landscaping. She thanked the Planning Commission for their consideration.

Chair Hungerford closed the public hearing.

Ms. Ryan commented that staff was not aware of any of the concerns that the appellant addressed regarding a sewer connection. She said if the Planning Commission thinks this needs to be considered, the item could be continued to allow time for staff to review the concern.

Comm. Babcock moved that this item be continued for two weeks to allow staff time to check into the sewer difficulties mentioned by the applicant. Comm. Klein seconded.

Comm. Babcock said that a variance is very difficult to approve. She said based on the information she has seen tonight that she cannot make the findings, but rather than deny the appeal she would like to see what staff finds out regarding the possible hardship in order to get a sewer connection for the property.

Chair Hungerford said that he will be supporting the motion and that he agrees with Comm. Babcock. He said he does not see the information to approve the variance, but the issue about the sewer connection warrants exploring.

Final Action:

Comm. Babcock made a motion on 2006-0087 to continue the item to April 24, 2006 to allow staff time to assess the sewer situation related to this property. Comm. Klein seconded.

Motion carried unanimously, 5-0, Comm. Simons absent.

This item is continued to the April 24, 2006 Planning Commission meeting.

PLANNING COMMISSION MINUTES OF APRIL 24, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL **(Continued from April 10, 2006)**

Steve Lynch, Associate Planner, presented the staff report. He said this item was continued from the April 10, 2006 meeting to have staff further research issues related to the flood zone and the sewer connection of the site. Staff requested that the applicant provide an estimate of the project cost difference depending on where the bathroom is located to determine if a change in the design would result in a more expensive sewer line connection that might be a financial hardship to the property owner.

Chair Hungerford asked staff if the applicant was able to provide the financial impact of a new connection. Mr. Lynch said the applicant provided this information to Planning staff and the Commissioners this evening and asked that the applicant discuss the information during the applicant presentation.

Chair Hungerford opened the public hearing.

Lorraine Guerrera Maciejowski, applicant, thanked the Planning Commission for the opportunity to clarify a few issues from the April 10, 2006 meeting. She summarized what had been reviewed. Ms. Maciejowski said that a staff member had complimented their design at the Administrative Hearing and that letters of approval from neighbors were provided. She said other areas discussed were the fence and landscaping, topography and grading of the site. She said that she feels the site shows "extraordinary topography" which is one of the findings for a variance. She said that the definition of extraordinary is "uncommon and unusual" and that she feels their site meets the definition. She also referenced the Americans with Disabilities Act (ADA) guidelines for design requirements for bathrooms, submitted a design that would meet the requirements and discussed some of the requirements. She said they need to remodel the bathroom to be ADA compliant to accommodate a relative living with them. She said, regarding the waste collection issue, that they consulted a California licensed building contractor and plumber and that her husband would report on the findings.

Mieczyslaw Maciejowski, applicant, reported the findings and provided a written statement from the contractor regarding the sewer connection. He described some of the findings, why they chose the proposed design for the addition, and some of the problems that would result if they had to redesign the addition

extending to the rear of the house rather than the side, taking into consideration the recently landscaped backyard. He said if a sewer connection had to be added on the Flicker Way side that the contractor estimated the project would cost an extra \$20,000 and be disruptive to the neighborhood while putting in the new line. Mr. Maciejowski said he believes the most convenient design for the addition is the one proposed on the side of house that could be tied into the existing street sewer lines. He said he feels they have provided the necessary information for the variance so that the remodel will be both economically feasible and visually pleasing for the neighborhood.

Comm. Sulser asked Mr. Maciejowski how much the sewer hook up would cost if a variance were granted. Mr. Maciejowski said he is not sure what the cost would be to hook up to the existing sewer line, but if a separate sewer line is required, it will cost about \$20,000 more including the disruption of sidewalks and streets while the new sewer line is being installed.

Comm. Babcock asked Mr. Maciejowski if they had considered extending the bedroom into the backyard and putting the bathroom on the east side of the home which would not require a variance. He said if they extended the bedroom to the rear of the house they would lose one of the dual paned windows and part of the useable backyard space. He said they could consider narrowing the addition in order to meet the setbacks, but it would not be practical and would not accommodate the size needed for the bathroom for a person with limited mobility.

Chair Hungerford closed the public hearing.

Trudi Ryan, Planning Officer, commented that the City Attorney advises that the ADA laws look for reasonable accommodation for facilities for those with disabilities which could be used as a reason, if the Planning Commission chooses, to approve the variance. Ms. Ryan said if the Commission determines that an additional sewer connection is a hardship that this hardship could also be an appropriate reason to approve the variance along with the ADA component.

Chair Hungerford commented to Ms. Ryan that he thought the Planning Commission was to consider the property configuration only when considering a variance and not at the applicant. Ms. Ryan said the code regulates that to grant a variance that something has to be unique about the "property or the use." She said, in this case, the use could be the ADA compliant bathroom.

Comm. Babcock moved for Alternative 1, to deny the appeal and uphold the decision to deny the Variance. **Comm. Simons** seconded the motion.

Comm. Babcock said she was unable to make the findings and that she feels there are alternative designs for the addition that can be considered using part of the backyard rather than the side yard.

Comm. Simons said he thinks that adding a secondary sewer line seems unnecessary and that there are alternatives that would be less expensive than \$20,000.

Final Action:

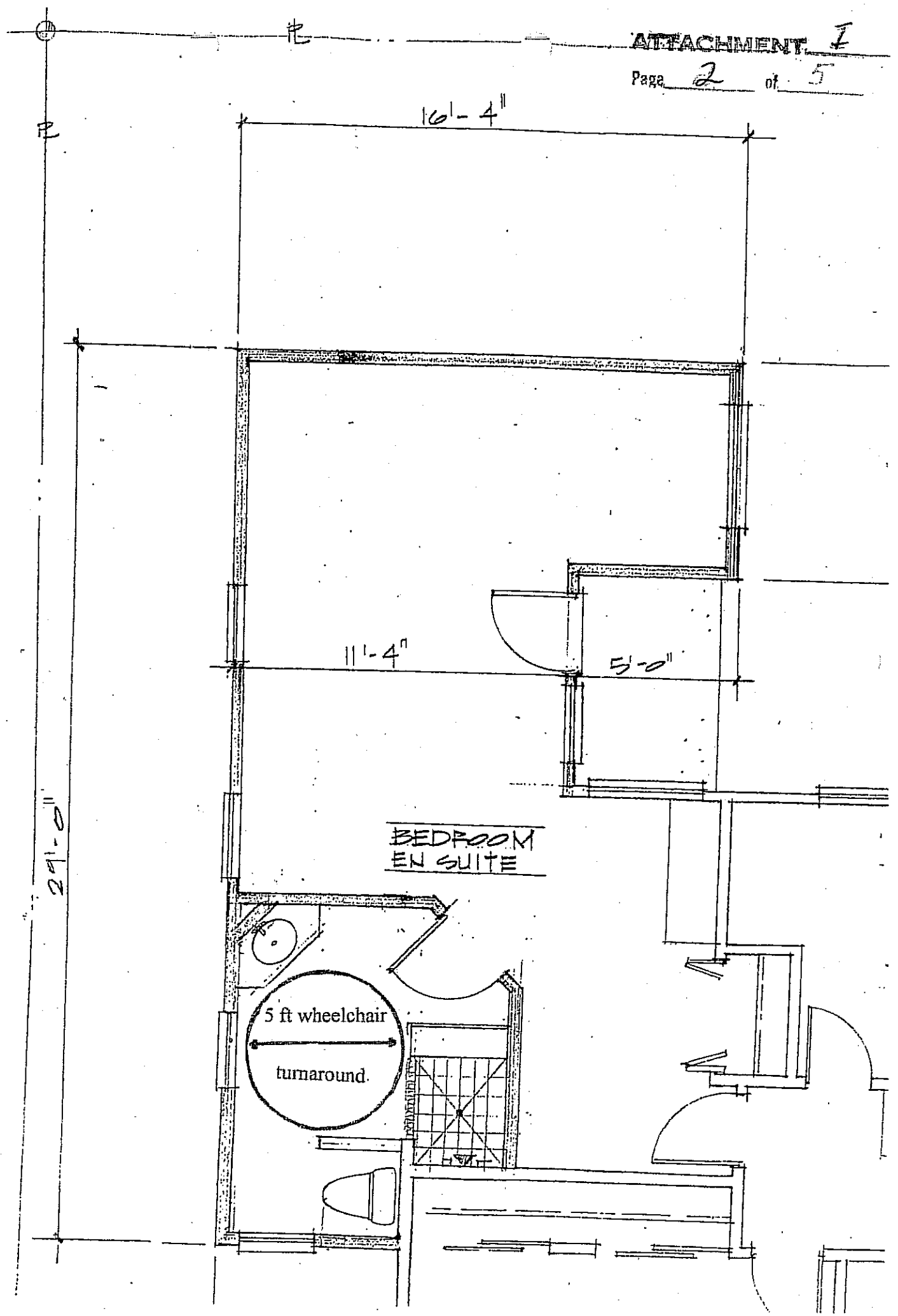
Comm. Babcock made a motion on 2006-0087 to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Variance. **Comm. Simons** seconded.

Motion carried unanimously, 5-0, Vice Chair Fussell absent.

This item is appealable to City Council no later than May 9, 2006

ADA compliant bathroom

1. Entry doors should be a minimum of **36 inches** to accommodate a wheelchair.
2. Wheelchair turnaround should be 5ft in diameter
3. Inside dimensions of the inside of the **shower** must be at least **36 x36** inches , with a curb no higher than ½ inch.
Grab bars for support and ADA lever type handles are required.
If a fold down chair is used, handles needs to be within easy reach of the on/off valves. The shower head should be an adjustable height type.
4. The space in front of the toilet should be **36 inches**. The toilet can be set into a **36 inch** space with grab bars and needs to be **3.5 inches higher** than a normal toilet with an elongated style.
5. The sink and vanity needs to be lower than a standard sink with an open access so that a wheelchair can easily roll under the counter. Plumbing pipes need to be covered to avoid heat burns and the sink should have ADA approved lever knobs.



WOODSTOCK BUILDERS
General Building Contractor
798 Vista Grande Avenue
Los Altos, CA 94024
(650) 966-1344
California State License No. 555991

20 April 2006

Mr. Tony Maciejowski

Subject: 734 Ashborne Avenue
Sunnyvale, CA 94087

Dear Mr. Maciejowski:

After performing a site review of your subject residence, it is in my professional opinion, along with that of a California licensed plumber, that additional bathroom should be located on the Flicker Way side of your residence for the following reasons:

- The existing underfloor grade conditions allow for a clean tie-in to the existing four inch sewer line;
- The underfloor framing will not be disturbed;
- Access to the sewer clean outs will be easily available; and
- Disturbance of exterior grade changes will be kept to a minimum

Regarding the alternate proposal of adding a bathroom to the rear of your residence, the necessary grade to achieve proper sewage flow will be difficult because:

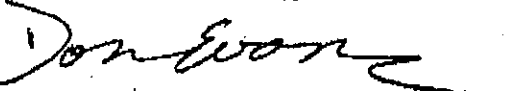
- Existing underfloor framing removal could cause structural issues;
- Given the distance from the front to the back of the house and the depth necessary to tie into the existing sewer could damage the existing line located in the front yard

In closing, the possibility of adding a new sewer tie-in to the Flicker Way side of your residence would be cost prohibitive in an amount exceeding \$20,000 along with disruption to your neighbors and city traffic.

If I can be of further assistance to you regarding this matter, please do not hesitate to contact me. I can be reached at the letterhead address and by telephone at (650) 966-1344.

Thank you and best regards,

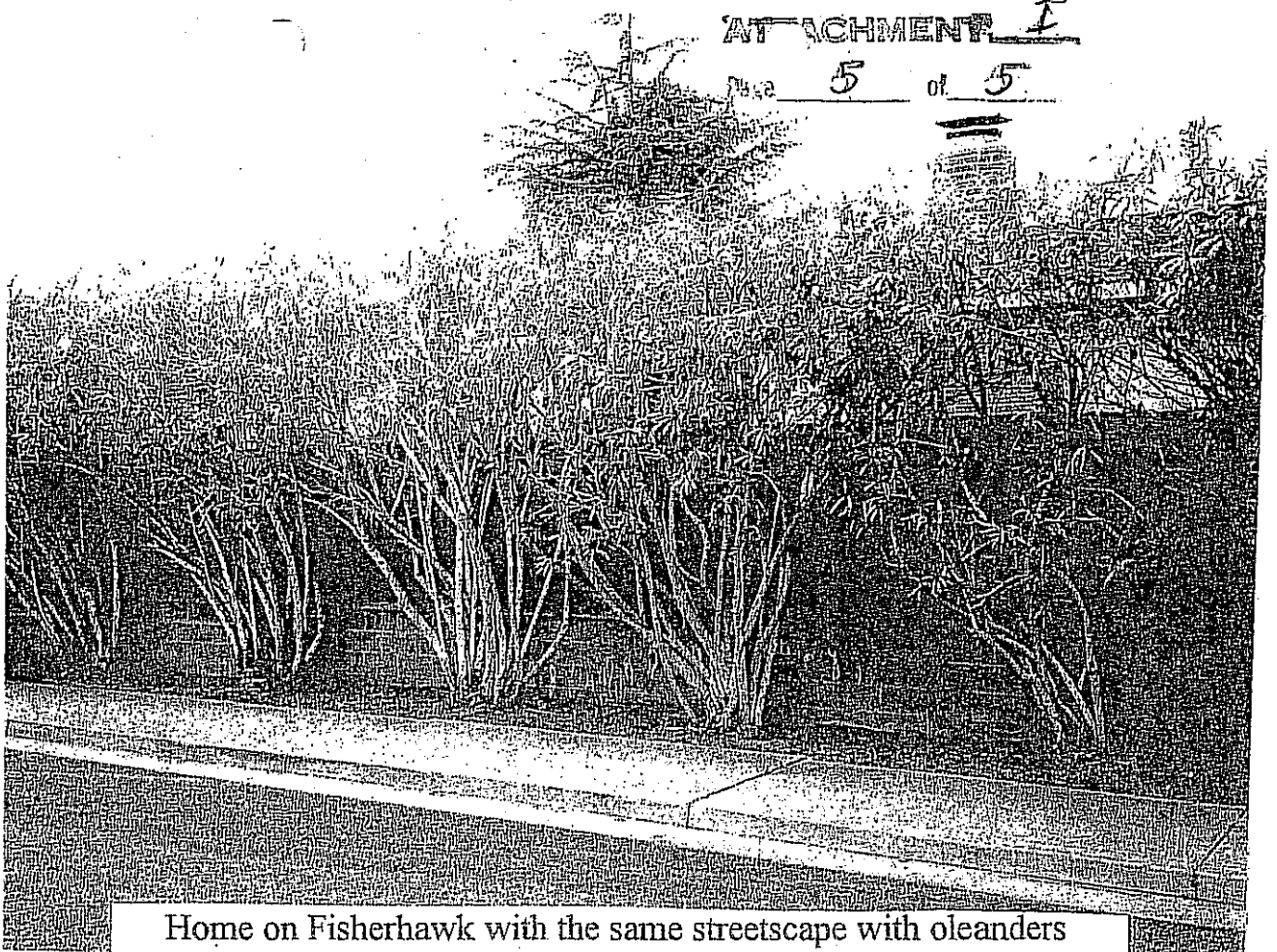
WOODSTOCK BUILDERS



Don E Evans
Owner



Proposed fence at 734 Ashbourne on the Flicker side



Home on Fisherhawk with the same streetscape with oleanders that is planned for Ashbourne Drive.



ATTACHMENT 2
Page 1 of 17

Council Meetings > 2006July > Minutes > July 18, 2006

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL
Tuesday, July 18, 2006**

The City Council of the City of Sunnyvale adjourned from a 5:30 p.m. Closed Session pertaining to: Conference with Legal Counsel, Existing Litigation. Government Code Section 54865.9(a), Thompson-Pacific Construction Inc. v. City of Sunnyvale, Appellate Case No. H029818 and Conference With Legal Counsel - Anticipated Litigation. Government Code Section 54956.9, Significant Exposure to Litigation, 1 potential case and a 6:00 p.m. Special Study Session pertaining to: Update of Fiscal Sub-Element and met in Regular Session in the City Council Chambers, 456 West Olive Avenue, Sunnyvale, California at 7:00 p.m., with Mayor Swegles presiding.

SALUTE TO THE FLAG

Mayor Swegles led the salute to the flag.

ROLL CALL**PRESENT:**

Mayor Ron Swegles
Vice Mayor Otto Lee
Councilmember John Howe
Councilmember Dean J. Chu
Councilmember Melinda Hamilton
Councilmember Anthony Spitaleri
Councilmember Christopher Moylan

ABSENT:

None

STAFF PRESENT:

Amy Chan, City Manager
David Kahn, City Attorney
Robert Paternoster, Director of Community Development
Elaine Wesely, Finance Manager - Purchasing
Curtis Black, Superintendent of Parks
Connie Verceles, Senior Management Analyst
Tim Kirby, Revenue Systems Supervisor
Marvin Rose, Director of Public Works
Christy Gunvalsen, Neighborhood Preservation Manager
Trudi Ryan, Planning Officer
Mark Bowers, Solid Waste Program Manager
Katherine Bradshaw Chappelle, City Clerk

CLOSED SESSION REPORT

Vice Mayor Lee reported that the City Council met this evening in Closed Session related to: Conference with Legal Counsel, Existing litigation. Government Code Section 54865.9(a), Thompson-Pacific Construction Inc. v. City of Sunnyvale, Appellate Case No. H029818 and Conference With Legal Counsel - Anticipated Litigation. Government Code Section 54956.9, Significant Exposure to Litigation, 1 potential case

Vice Mayor Lee reported that direction was given, but no action was taken on both items.

MOTION: Vice Mayor Lee moved and Councilmember Howe seconded to defer Public Hearing Item No. 6 Sunnyvale Bicycle Plan Update – Study Issue to the Council Meeting of August 8, 2006, to allow the City Attorney to determine that the code is in compliance with State of California regulations.

VOTE: 7-0.

CONSENT CALENDAR

Councilmember Hamilton removed Item 1. J.

Councilmember Howe removed Item 1. A.

Vice Mayor Lee removed item 1. H.

Mayor Swegles opened the Public Hearing. No one wished to speak and Mayor Swegles closed the Public Hearing.

MOTION: Vice Mayor Lee moved and Councilmember Howe seconded to approve the Consent Calendar with the exceptions of Items 1.A., 1.H. and 1.J.

VOTE: Motion carried 7-0.

1.A. Approval of Draft Minutes of Regular Meeting of June 13, 2006

Councilmember Howe pulled this item in order to abstain from voting since he was not in attendance at the meeting.

MOTION: Councilmember Moylan moved and Councilmember Hamilton seconded to approve Item 1.A.

VOTE: 6-0 (Councilmember Howe abstained)

1.B. Approval of Draft Minutes of Special Meeting of June 20, 2006

1.C. Approval of Draft Minutes of Special Meeting of June 27, 2006

1.D. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.E RTC 06-235 List of Claims and Bills Approved for Payment by the City Manager (List Nos. 304, 305, 306 and 307)

Staff Recommendation: Council reviews list of bills.

1.F RTC 06-237 Transmittal of Golf Course Maintenance Operations and Golf Shop Services (Program 645) Performance Results Audit for FY 2004/2005)

Staff Recommendation: Alternative No.1 – Council receives the audit report and concurs with management's acceptance of recommendations.

Personnel Items

**1.G. RESOLUTION Implementation of Salary Survey: Amendment to the
 RTC 06-232 Salary Resolution to reflect the new pay ranges for the
 Senior Programmer Analyst and related job classifications**

Staff Recommendation: Alternative No. 1: Council adopts a resolution to amend the Salary Resolution to reflect the new pay rates for Senior Programmer Analyst and related job classifications and approves Budget Modification No. 2.

**1.H. RESOLUTION Development of Job Classifications for Finance and Human
 RTC 06-238 Resources Departments: Principal Buyer, Budget Analyst
 I/II, Senior Human Resources Analyst, and assignment of
 the Senior Accounting Technician to Pay Plan G
 (Confidential Employees)**

Vice Mayor Lee pulled this item because he wished to inform the public that a revised Exhibit A to Attachment B (last page of the staff report) was submitted to Council. The listed pay grade 17 for Budget Analyst 1 and pay grade 18 for Budget Analyst 11 were revised to pay grade 16 and 17 respectively.

Mayor Swegles opened the Public Hearing. No one wished to speak and Mayor Swegles closed the Public Hearing.

MOTION: Vice Mayor Lee moved and Councilmember Howe seconded to approve Alternative No.1: Council approves all recommendations contained in the report related to proposed classification as amended.

VOTE: 7-0.

**1.I. RESOLUTION Adoption of Resolution to Authorize the Director of Human
 RTC 06-226 Resources to Receive Criminal History Information for New
 Employees/Volunteers**

Staff Recommendation: Alternative No. 1: Council adopts Resolution authorizing the Director of Human Resources, or designee, to access summary criminal history information for employment/placement purposes for all prospective employees, volunteers and independent contractors.

Contracts

**1.J. RTC 06-221 Award of Bid No. F0504-74 to Replace the Waterproofing
 and Carpet on an Elevated Deck at the Sunnyvale Golf
 Course**

Elaine Wesely, Finance Manager – Purchasing, and Curtis Black, Superintendent of Parks, stated they were available to answer questions.

Councilmember Hamilton asked about condition of the carpet. Superintendent Black stated the carpet is acceptable, but will be destroyed in repairing the roof deck and membrane. He stated the City is obligated to replace the carpet since staff damaged the carpet in assessing location of water leaks.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$60,000, to Louis and Riparetti, Inc., to replace the waterproofing and carpet on an elevated deck at the Sunnyvale Golf Course;
2. Approve a project contingency in the amount of \$12,000.

ATTACHMENT 2Page 4 of 17

VOTE: 7-0

1.K. RTC 06-236 Agreement between the City of Sunnyvale and Silicon Valley Leadership (formerly Leadership Sunnyvale) to provide Leadership Sunnyvale Training Program

Staff Recommendation: Alternative No. 1: Council approves the two-year SVL Agreement, depicted by Attachment A, to provide leadership training, via the Leadership Sunnyvale Program, to the Sunnyvale community and authorizes the City Manager to enter into said Agreement dated retroactively to July 1, 2006.

PUBLIC ANNOUNCEMENTS

Mayor Swegles opened Public Announcements. No one wished to speak and Mayor Swegles closed Public Announcements.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

Mayor Swegles announced that Public Comments section is fifteen minutes (with three minutes per speaker). The first five individuals submitting Speaker Cards will have an opportunity to speak at this time, and all others will have an opportunity to speak at the end of the meeting.

William Callahan, architectural committee member of the Fair Orchard Tract, requested on behalf of the committee, that a motion be made and voted on by City Council to terminate relations with Four Quarter properties at the earliest opportunity. Councilmember Howe stated that the Council has taken every action that they can (with legal guidance) to be sure this issue proceeds in a timely manner.

David Merritt spoke about the need for an interim measure to allow for additional parking at Classic at Fair Oaks Project. He stated an interim measure would allow parking along Arques. Mr. Merritt spoke on behalf of homeowners Stan Moore, Boben Punnose, Edith Hsu, Rajeev Gollamudi, Daniel Moren, Salma Rashid, Helen Hu, Theresa Huang, and Srilakshmi Seetharaman. Councilmember Howe asked if the homeowners association enforces parking in the garages. Mr. Merritt stated the association is still under the control of the builder.

Councilmember Howe asked staff to update Council on:

1. Status of traffic studies on Arques
2. Provision in the homeowners association that requires in the conditions of approval that garages are used for parking
3. City ability to enforce garage use provision with the builder before they turn the association over to the homeowners

Tap Merrick stated concerns regarding the use of public funds for the renovation and maintenance of school district properties. He also stated that the school districts should provide access to existing restrooms instead of the City constructing restrooms.

PUBLIC HEARINGS/GENERAL BUSINESS

**2. RESOLUTION Approval to Levy and Collect Assessment for Downtown
RTC 06-229 Parking Maintenance District for Fiscal Year 2006/2007**

(htm) **and 2007/2008 and Approval of the Final Engineer's Report**

Connie Verceles, Senior Management Analyst, presented the staff report. She stated ballots were mailed to property owners and ballots are to be tallied at tonight's meeting with final Council action to occur. She stated Council shall first open the Public Hearing in order to receive any ballots that were not mailed, and the City Clerk will notify Council if any protests were filed. The public portion of the hearing will then close and staff will report the results of the ballot tally.

Mayor Swegles opened the Public Hearing at 7:37 p.m. Mayor Swegles called for submittal of any ballots that were not mailed -- none were submitted. City Clerk Chappelle noted that there were no protests received or filed by the Office of the City Clerk. Mayor Swegles closed the Public Hearing at 7:38 p.m.

Analyst Verceles announced the Assessment passed with a vote of 64.46% in favor and 35.54 against.

MOTION: Councilmember Howe moved and Vice Mayor Lee seconded to approve Alternative No. 1: Council adopts Resolution to levy and collect assessment for the Downtown Parking Maintenance District for FY 2006/2007 and 2007/2008; approves Final Engineer's Report; and directs staff to instruct the engineer to forward assessment to the County for inclusion on the property tax rolls.

VOTE: 7-0.

**3. RESOLUTION Collection of Wastewater Charges for Property Outside the
RTC 06-225 City on the Fiscal Year 2006/2007 Property Tax Roll**

Tim Kirby, Revenue Systems Supervisor, presented the staff report.

Councilmember Moylan asked if it is in the City's interest to provide service for this area as opposed to having a private connection. Director Rose stated the service provided is a source of revenue; however, there are long-term obligations for maintenance of aging infrastructure, which makes providing this service more of a liability than an asset. He stated staff continues to monitor the market and meets on occasion with the surrounding cities related to a possible sale of the property. Currently there is not a demand for the area.

Mayor Swegles opened the Public Hearing at 7:42 p.m. No one wished to speak and Mayor Swegles closed the Public Hearing at 7:43 p.m.

MOTION: Councilmember Howe moved and Councilmember Spitaleri seconded to approve Alternative No. 1: Council adopts the resolution approving the proposed assessments:

with the understanding that this area pays the same rates as the City of Sunnyvale.

VOTE: 7-0.

**4. RTC 06-224 Public Hearing to Cause Charges for Non-Payment of
Utility Services and Non-Payment for the Cost of
Abatement of Public Nuisances to be Placed on the FY
2006/2007 Tax Roll**

Tim Kirby, Revenue Systems Supervisor, presented the staff report.

Councilmember Hamilton asked what action staff takes to collect payment prior to assessing fees. Staff stated for utilities, customers receive a bill, reminder notice, repeated direct notices (including a final demand letter from the City Attorney's office), and hand-delivered notices as a final collection attempt.

Christy Gunvalsen, Neighborhood Preservation Manager, stated staff notifies property owners numerous times and issues citations before proceeding with the abatement process. Abatement is the last resort to clean up a property. Supervisor Kirby stated once the property is abated, the noticing process is the same as for utilities; therefore, notices and demand letters are sent as first steps.

Vice Mayor Lee verified that one property listed on the Delinquent Utility Account attachment in the staff report (580 Madrone) had been paid and should be removed from the list.

Councilmember Moylan inquired about the procedure for nuisance abatements appeals and Manager Gunvalsen stated there is an Abatement Officer who hears the testimony of the property owner and reviews the staff report. Robert Paternoster, Director of Community Development, added that there is not an appeal for the cost of the abatement once it is done, but there is an opportunity for explanation and additional time may be granted as an effort to remedy the situation.

Mayor Swegles opened the Public Hearing at 7:52 p.m.

Milena Malikova and Eman Malikova spoke against the City's process for abatement and spoke in favor of owner's rights regarding their property.

Jill Lopez spoke in favor of the City's abatement process and stated her concerns with the Malikova's yard overgrowth since she is the back neighbor. Councilmember Moylan asked Ms. Lopez if the work the City had done helped the situation and she stated that the City addressed the front yard, but not the back yard.

Tina Cardinali and Betty Cardinali stated their concerns with issues being created by the overgrown yard and associated problems. She stated her parents (who live next door to the Malikova's) are not able to trim their bushes with out harassment from the Malikova's. Councilmember Howe verified that her parents are attempting to trim bushes and trees in their own yard.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 8:07 p.m.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve Alternative No. 1: Council adopts the attached resolution causing charges for non-payment of utility services and non-payment for the cost of abatement of public nuisances to be placed on the FY 2006/2007 tax roll:

with the exception of 204-27- 018 (580 Madrone Avenue), since full payment was received after the report was prepared.

Councilmember Moylan asked who owned the property at 1063 Hudson Way since the speakers were not listed on the report as the owners. Manager Gunvalsen verified that Ms. Malikovich owns the property with her husband James Critz.

Councilmember Spitaleri asked what type of records are kept on abatements. Manager Gunvalsen stated within the notice to abate, it specifically states what is needed to comply and what will be done if they do not comply (specifically by the contractor) in addition to photographs after the property is abated. Councilmember

Spitaeri verified that the contractor is given specific instructions for the abatement, a staff person is present on the property at the time of the abatement, and staff insures that that only the work identified in the abatement notice is completed.

VOTE: 7-0.

5. **06-239 & Attachments A - H**
 Attachments I - J
 Attachment K1 - K30
 Attachment K31 - K38
 Attachment K39-K44
 Attachment K45 - K49
 Attachment K50 - K54
 Attachment K55 - K58
- 2006-0357 BARK Kennel & Boarding (Applicant) August M. Hagemann, Jr. and Linda J. Hagemann Trustee [Owners]:**
Appeal of a decision by the Planning Commission approving a Use Permit on a 32,300 square-foot site to allow long-term boarding and daycare services for up to 335 dogs and 50 cats and including ancillary retail services. Property located at 170 North Wolfe Road (near Central Expressway) in M-S (Industrial & Service) Zoning District. (Negative Declaration)

Trudi Ryan, Planning Officer, presented the staff report.

Mayor Swegles opened the Public Hearing at 8:16 p.m.

The appellant, Thomas Haverstock, (property and business owner next to the applicant), stated his concerns over the approval of this use. He stated this service is a non-conforming use as the business structure surrounding this area is professional services. Councilmember Moylan asked what Mr. Haverstock meant by non-conforming use. He stated it is zoned for light industrial and services and he does not believe that a boarding kennel meets the definition of a service. Councilmember Moylan asked staff to verify the zoning regulations.

Mr. Haverstock stated that the noise survey included with the staff report stated that it measured the ambient noise and the noise level and then subtracts the ambient noise level. He stated the ambient noise level needs to be added back into the numbers in order to get the real noise level.

Walter Wilson and Jonathan Owens, business owners near the proposed animal boarding facility, stated concerns about noise, kennel waste/odor, and how these issues would be handled.

Councilmember Moylan stated there are not many dog kennels in the City and asked Mr. Owens where the facility should locate. Mr. Owens stated a heavy industrial area would be the best area for this type of facility. He stated that the Planning Commission approved this project prior to PetsMart announcing the addition of two pet hotels in this area.

Joel Leineke, applicant for the permit, spoke in favor of this use. He stated the facility is an upscale boarding facility. Councilmember Howe asked if there were a way to eliminate the outside waste odors, and Mr. Leineke stated this was an inside facility.

Councilmember Howe verified with staff that the reduced noise level only applies when adjacent to residentially zoned property and does not affect this property.

Councilmember Moylan verified that dog waste would be placed in dumpsters at the back of the property.

Councilmember Moylan asked Mr. Leineke why he selected this location and he stated they looked for size of facility, close proximity to an airport, and convenience for large residential areas.

Councilmember Hamilton asked what other services will be offered. Mr. Leineke stated they will offer dog day care, grooming, and a retail space. Councilmember Hamilton verified that the dog day care usage is less than 10% of their total business, and that requests for dog walking in the evening is 10 to 15%.

Vice Mayor Lee asked how Mr. Leineke would correct the odor and/or noise issue if the businesses surrounding his facility were to complain. Mr. Leineke explained the facility is equipped with sound proofing and additional sound panels could be hung from the ceiling to provide additional sound absorption if needed. Mr. Leineke stated in response to possible odor complaints there are filters available which can extract odors or they could increase their garbage service pickups if needed.

Vice Mayor Lee verified that there will be staff present at this facility, seven days a week, twenty-four hours a day, who will be available to respond to customer and/or neighbor concerns.

Jeff Duke, real estate broker for the owner of the building, spoke in favor of the Use Permit and stated the building has been vacant for nine months. He stated the neighbors on either side of the proposed location are a metal furniture store and an auto body shop. Both of these uses create odor and noise.

Mary Wimmer, real estate broker for Mr. Lienneke, stated they started the permit process a year ago, addressed the issues, and are in favor of the approval of the Use Permit.

Officer Ryan stated that two sound measures cannot be added together and further explained the report. She stated the 30 decibels sound difference was caused by the opening and closing of the roll-up doors, and that the decibels listed in the report would have been lower if the doors had been closed.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 8:55 p.m.

Councilmember Hamilton stated a previous speaker mentioned that the ideal place for a boarding facility would be in a heavy industrial area along train tracks and she asked if the City had heavy industrial areas. Officer Ryan stated the City does have some general industrial areas along the railroad tracks, but they are also near residential areas.

Councilmember Howe asked if staff would recommend adding to the conditions of approval that should odors emanate from this site, the Director of Community Development can require additional trash pick ups, and/or policing of the outside yard. Officer Ryan stated she agreed and would add it under Condition A as: *plan subject to periodic review and update if there is demonstrated nuisance associated with odor.*

Councilmember Chu asked how the proposed area (and surrounding area) for this facility compares to the Mountain View and San Jose Airport PetSmart Hotel locations and their surrounding areas. Staff did not have information regarding the other locations.

MOTION: Councilmember Howe moved and Councilmember Spitaleri seconded to approve Alternative No.1: Uphold the decision of the Planning Commission by Adopting the Negative Declaration and approving the Use Permit with attached conditions

with additional conditions including:

amendment to the Recycling and Solid Waste Disposal Plan to state that the plan is subject to periodic review and update if it is demonstrated that there is a nuisance associated with odor; and a requirement of the applicant to provide a 24/7 contact for adjacent businesses to resolve problems.

VOTE: 6-1 (Vice Mayor Lee dissented).

6. RTC 06-230 Sunnyvale Bicycle Plan Update – Study Issue

**Attachment A
Attachment B1
Attachment B2
Attachment B3
Attachment B4
Attachment C
Attachment D
Attachment E
Attachment F**

As noted at the beginning of the meeting, Council took action to defer this item to the Council meeting of August 8, 2006

**7. RTC 06-223 & Attachments A - E
Attachments F - I Appeal of a decision of the Planning Commission for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code Section 19.34.040 to allow a six-foot setback where nine feet is required. Property located at 734 Ashbourne Drive (near E. Fremont Avenue) in R-O (Low-Density Residential) Zoning District**

Trudi Ryan, Planning Officer, presented the staff report.

Mayor Swegles opened the Public Hearing at 9:10 p.m.

Lorraine Guerrera Maciejowsk, appellant, presented the reasons for her appeal and the need to have American Disabilities Act (ADA) compliance in her home due to an elderly parent living in the home. Ms. Maciejowsk stated they need to add a bedroom and bathroom large enough for wheelchair turn-around.

Jerome Galli, attorney for the appellant, presented support for the appeal. He stated that ADA requirements apply to the zoning code.

Councilmember Hamilton asked the appellant if alternative plans were considered. Ms. Maciejowsk stated they did consider other plans, but for one reason or another they would not work.

Mayor Swegles stated the Planning Commission supported adding on to the back of the house and asked why this would not be an option. Ms. Maciejowsk stated it

would be a more expensive project and the addition would be 87-square feet smaller than the proposed project, which would not allow for the wheel chair turn-around.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 9:28 p.m.

Vice Mayor Lee asked how the ADA requirement affects City code. David Kahn, City Attorney, noted that the ADA compliance issue was not raised by the appellant at the first Planning Commission meeting for this application, but it was raised at subsequent meetings. City Attorney Kahn explained that ADA is a federal law and one of the requirements of the ADA is reasonable accommodation. He stated that ADA reasonable accommodation can require adjustments to a zoning code (if the zoning code does not allow for reasonable use of the property for someone who qualifies under the ADA). ADA reasonable accommodation does not require a Variance if there are other reasonable alternatives available that would not cause an undue hardship. Vice Mayor Lee verified that a Variance is permanent for that property.

Councilmember Howe stated he is aware of a Variance that was granted for the addition of a second kitchen to a property, and at the time of sale, removal of the kitchen would be required. City Attorney Kahn stated that a second kitchen does not require a foundation and structure to be built; rather it was added within an existing structure. He stated that granting a Variance would be permanent in this case.

Councilmember Spitaleri confirmed that staff's recommendation is based on the belief that there are other ADA design alternatives available that do not require a Variance and in staff's opinion these alternatives would not create a hardship any different than when other property owners add a bathroom.

Amy Chan, City Manager, stated the Planning Commission understood the flexibility of their decision as they were told by the Assistant City Attorney that they can take ADA into consideration if they found that reasonable accommodation was needed. Staff findings were that there are other plan alternatives and they have not been able to make the finding that reasonable accommodation is needed. Council would need to identify if the alternatives would cause undue hardship and if so, they may want to support the ADA law and grant the Variance.

City Attorney Kahn stated when this was brought before the Planning Commission for a Variance, the emphasis was not on the ADA compliance or reasonable accommodation; it was based on property issues. Therefore, the issue before Council is whether there are other alternative configurations that would effectively accomplish the same result. He stated it would be important for Council to clarify the cost of any alternatives before making their decision. When considering if alternatives would create undue hardships, Council should look at the overall value of the project, the cost of the project, and what percentage of that project the addition would cost.

Councilmember Chu confirmed that an alternative design incorporating the size of the room and bathroom as listed on the original plan could be designed without affecting the set back.

Vice Mayor Lee asked that the Public Hearing be reopened so that he may ask the applicant what the difference in cost would be for the alternative.

Mayor Swegles reopened the Public Hearing.

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Mr. Maciejowsk stated they do not have bids from contractors because they do not have definite construction plans. The costs submitted were for plumbing work only. Mayor Swegles confirmed that the cost for plumbing work to enlarge the house at the back (as an alternative that would comply with current zoning) would be an additional \$1,500.

Mayor Swegles confirmed that the appellant is requesting a bedroom and a bathroom and that without a Variance; they believe a bathroom is all that they would be able to add to the house.

Officer Ryan requested a recess in order to confer with the appellant.

MOTION: Councilmember Chu moved and Councilmember Howe seconded to reconsider this item immediately after Item No. 8 to allow time for the applicant to confer with staff to clarify cost estimates.

VOTE: 7-0

8. RTC 06-240 Update on the Economic Development Study Issue - Carbon Dioxide Emissions Reduction Project and Approval of Budget Modification No. 3

Mark Bowers, Solid Waste Program Manager, presented the staff report.

Councilmember Chu stated he believed Council previously set long-range goals to reduce gas emissions through implementing twenty to thirty reduction measures over the next six to seven years. City Manager Chan stated Council received a report on green-house effects last year, but Council did not take an official policy position. She stated she would verify this information and report back to Council whether or not long-range goals were set.

Mayor Swegles opened the Public Hearing at 10:14 p.m.

Sally Tomlinson, Executive Director of Sustainable Silicon Valley, urged Council to accept staff's recommendation and become a partner of Sustainable Silicon Valley.

Patrick Grant, spoke in favor of reducing Carbon Dioxide Emissions and urged Council to also look at water use, building materials, general business practices, and building techniques. He suggested forming a Sustainable Practices Committee.

Kevin Jackson and Thomas Mayer, members of the Sunnyvale Bicycle and Pedestrian Advisory Committee, spoke in favor of the staff recommendation.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 10:26 p.m.

MOTION: Councilmember Hamilton moved and Vice Mayor Lee seconded to approve Alternative No.1: Council becomes a pledging partner of Sustainable Silicon Valley (SSV) and directs staff to determine a reduction goal, select a baseline year and return with a work plan; and, approve Budget Modification No. 3 in the amount of \$22,800 for annual SSV dues, labor costs and a one-time consultant cost.

Councilmember Howe offered a friendly amendment to clarify that General Fund Service Level Set-Aside funds would be used for one year only and future costs would

be included in the annual budget approval process. Councilmember Hamilton agreed to modify her motion to read:

REVISED MOTION: Councilmember Hamilton moved and Vice Mayor Lee seconded to approve Alternative No.1: Council becomes a pledging partner of Sustainable Silicon Valley (SSV) and directs staff to determine a reduction goal, select a baseline year and return with a work plan; and, approve Budget Modification No. 3 in the amount of \$22,800 for annual SSV dues, labor costs and a one-time consultant cost **with the addition** that General Fund Service Level Set-Aside funds would be used for one year only and future costs would be included in the annual budget approval process.

VOTE: 7-0.

7. **RTC 06-223 & Attachments A - E Attachments F - I CONTINUATION** **Appeal of a decision of the Planning Commission for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code Section 19.34.040 to allow a six-foot setback where nine feet is required. Property located at 734 Ashbourne Drive (near E. Fremont Avenue) in R-O (Low-Density Residential) Zoning District**

Mayor Swegles reopened Item No. 7 at 10:45 p.m.

Officer Ryan reported on her meeting with the appellant and clarified that the appellant would not be considering an addition to their house (with an accessible bathroom) if they did not have someone in their home with this need. They are trying to minimize the cost and the additional cost of locating the bathroom further to the rear of the property would be a minimum \$1,500 to connect to existing sewer line.

Councilmember Howe verified with Officer Ryan that the appellants could observe the City's zoning set backs (without a Variance) and could add a bedroom and a bathroom as planned (including the allowance for a wheel chair turn-around).

MOTION: Councilmember Spitaleri moved and Councilmember Hamilton seconded to approve Alternative No. 2: Grant the appeal and approve the Variance with attached conditions.

VOTE: 3-4 (Councilmembers Howe, Chu and Moylan and Mayor Swegles dissented) Motion failed.

MOTION: Councilmember Howe moved and Vice Mayor Lee seconded to continue this item to the Council Meeting of August 8, 2006 and instruct staff to work with the appellant to come up with their best estimate on what the cost of the construction would be from the alternate design.

Councilmember Moylan stated the burden is on the appellant to show that meeting zoning standards would create an incredible hardship. They would need to show a cost estimate with a Variance compared to a cost estimate without a Variance in order to prove that accommodating the City's zoning code would create an unusual hardship. He stated the appellant has not met the burden of proof that accommodating the City's zoning code would create an unreasonable hardship; instead, they have simply stated it would be more expensive.

ATTACHMENT 3
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VOTE: 7-0.

**9. RTC 06-234 Selection of *Ad Hoc* Charter Review Committee Members
(htm) and Direction**

David Kahn, City Attorney, presented the staff report and requested that Council announce their *Ad Hoc* Charter Review Committee Member selections:

Councilmember Spitaleri selected Bob Lawson and Howard Chuck
Councilmember Howe selected Pat Castillo and Mark O'Connor
Vice Mayor Lee selected Laura Babcock and Larry Klein
Mayor Swegles selected Dianna McKenna and Richard Napier
Councilmember Hamilton selected Amy Maloney and Geoff Ainscow
Councilmember Chu selected David Simons and Daisy Nishigawa
Councilmember Moylan selected Larry Stone and Virginia Shea

Mayor Swegles nominated Bo Chang as the 15th member to the committee.

MOTION: Councilmember Howe moved and Councilmember Spitaleri seconded to approve the Mayor's appointment of Bo Chang as the 15th member of the *Ad Hoc* Charter Review Committee.

VOTE: 7-0.

City Attorney Kahn stated the next issue for Council to consider was whether or not to identify and direct the committee to consider certain charter-related items as priority issues.

City Attorney Kahn stated the first priority issues needed to be identified and voted on by a majority of the Council, with second priority items as individual Councilmember issues.

Mayor Swegles asked Councilmembers to state items they would like considered and then the Council would vote on the items.

Councilmember Howe - review of elections by seats or at-large

Councilmember Hamilton - review of maternity leave for Council and maternity/paternity leave for adoptions, and a two-year Mayoral term

Councilmember Spitaleri - review Charter provisions related to the Personnel Board

Councilmember Chu - clarification of term limits as applied to those who do not serve consecutive terms for Council, and for a board or commission that seldom meets, should those members be eligible to serve on another more active board or commission at the same time.

Vice Mayor Lee - direct election of the Mayor, and the validity of the requirement of citizenship/residency to serve on Boards and Commissions

Councilmember Moylan - review and update of Article 16 of the Charter (Franchises)

Mayor Swegles - review of term limits to consider three four-year terms instead of the current two four-year terms.

Councilmember Hamilton stated the committee has seven months to review these items and questioned how many items could realistically be accomplished. City Attorney Kahn noted that the 1991 committee took seven months to consider one issue. He suggested five or six issues would be a challenge, but could allow for some in-depth study.

City Manager Chan suggested that similar items be grouped for consideration.

Councilmember Moylan suggested the City Attorney review Council's requests first to determine if any may not require a Charter amendment after which Council could establish a priority list for the committee.

Councilmember Moylan asked that Council remove the review of seat versus at-large elections since this issue needs to be covered in the City Attorney's study issue.

Vice Mayor Lee stated that Council should rank the items, but wanted all items kept on the list.

Councilmember Howe stated that the committee may have some ideas of their own and he is in favor of reducing the items to six.

Mayor Swegles opened the Public Hearing at 11:21 p.m.

Thomas Mayer stated that Councilmember Hamilton's proposal for maternity leave should include paternity leave for live births.

Councilmember Hamilton stated she did not include an increase in paternity leave for fathers (other than with an adoption), because she felt the two months covered by the charter were sufficient.

Harriet Rowe stated she supported pulling items that may detract from the Charter review due to the nature of the subject matter and the need to allow the proper amount of time for a complete review. She recommended handling those items through a different process.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 11:25 p.m.

Mayor Swegles indicated that the City Clerk would read the items and Council would vote on them.

Councilmember Moylan asked for a reading of the items (prior to voting) as grouped per the City Manager's suggestion.

City Clerk Chappelle read the items grouped as follows:

- Election of Councilmember at large, instead of by seats
- Maternity leave for pregnant Councilmembers and/or maternity/paternity leave for adoptions Councilmember Hamilton stated she would leave it up to the committee if they wanted to add paternity leave for live births.
- Boards and Commissions grouping to include: Personnel Board provisions; for board or commission that rarely meets - should those members be eligible to serve on another more active board or commission at the same time; and

current requirement of citizenship/residency to serve on Sunnyvale Boards and Commissions

- Clarification of term limits
- Directly-elected Mayor
- Two- year Mayoral Term
- Article 16 related to Franchises

Mayor Swegles announced the items will be prioritized by those receiving the largest number of votes.

Votes were as follows:

Councilmember at large, instead of by seats

VOTE: 4-3 (Councilmembers Spitaleri, Hamilton and Moylan dissented)

Maternity leave and paternity leave related to live births and adoptions

VOTE: 5-2 (Councilmember Howe and Mayor Swegles dissented)

Two-year Mayoral term instead of one-year

VOTE: 4-3 (Vice Mayor Lee, Mayor Swegles, Councilmember Moylan dissented)

Board and Commission Items Group:

- Personnel Board provision;
- Board or commission that rarely meets, should those committee members be eligible to served on another more active commission at the same time; and
- Current requirement of citizenship/residency to serve on Sunnyvale Boards, and Commissions

VOTE: 5-2 (Mayor Swegles and Councilmember Chu dissented)

Items related to Term Limits:

- Clarification of Term Limits related to non-consecutive four-year terms; and
- Consider three (4-year) terms instead of 2 (4-year) terms.

VOTE: 5-2 (Vice Mayor Lee and Councilmember Moylan dissented)

Direct election of Mayor

VOTE: 2-5 (Mayor Swegles, Councilmembers Spitaleri, Howe, Hamilton and Chu dissented).

Article 16 – Franchise Update

VOTE: 4-3 (Councilmember Howe, Mayor Swegles and Councilmember Hamilton dissented).

MOTION: Councilmember Howe moved and Vice Mayor Lee seconded to approve Alternative No. 3: Council approves additional funds in an amount not to exceed \$35,000 to fund the *Ad Hoc* Charter Review Committee

with direction that the funds shall be taken out of the General Fund Service Level Set-aside Account.

Councilmember Hamilton offered a friendly amendment to remove the direct election

of the Mayor from the list as it did not get a majority vote. Friendly amendment was not accepted and Councilmember Howe asked Councilmember Hamilton to address that issue in a separate motion.

VOTE: 7-0.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to forward the six items that received at least a majority vote (all but the directly elected Mayor) to the *Ad Hoc* Charter Review Committee and instruct the committee to consider the items in priority order and then if there is additional time, the committee may pursue additional items.

Councilmember Moylan stated that Council previously approved the first priority to be items that received a majority vote, second would be individual Councilmembers priorities and then any additional items the committee chose to pursue based on their own priorities. He stated the item suggested for removal was approved by two Councilmembers and should be forwarded to the committee for consideration after the first six have been addressed.

Councilmember Spitaleri suggested a copy of the minutes from this Council meeting and the list be forwarded to the committee for review based on the original ground rules set by Council.

Councilmember Hamilton amended her motion to include forwarding the minutes of July 18, 2006, Council meeting and direct election of the mayor to the *Ad Hoc* Charter Review Committee.

VOTE: 2-5 (Councilmembers Spitaleri, Chu and Moylan, Vice Mayor Lee, and Mayor Swegles dissented). Motion failed.

MOTION: Vice Mayor Lee moved and Councilmember Chu seconded to forward the list of charter review items (in priority) to the *Ad Hoc* Charter Review Committee along with a copy of the minutes from this Council meeting. Should the committee exhaust all items forwarded to them, they may pursue other issues as time allows.

Councilmember Hamilton confirmed with Mayor Swegles that the top three items must be addressed by the committee first and then the committee is to address the remaining items in order of votes received.

Councilmember Chu stated that the committee may be able to go through a number of the items expeditiously and then focus on the more contentious items.

Councilmember Moylan stated that Council could indicate to the committee that Council expects the Committee to address the items in order of priority and complete each group before considering the next one, and that Council has no expectation that the committee completes the list.

VOTE: 7-0.

Councilmember Spitaleri asked if Councilmembers may be involved with issues (such as testifying or presenting facts on issues) to the committee and City Attorney Kahn stated Councilmembers may testify or present facts as part of the Public Hearing.

PUBLIC COMMENTS (Cont.)

Nainita Patel, Maggie Wu, Chet Gandhi, Lily Wu, Alex Wang, Jeeta Gandhi, Xiaojian Yang

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submitted Speaker Cards but had left the Council Chambers and did not speak.

Valerie Driscoll spoke about noise disruptions on Fair Oaks Avenue. Councilmember Moylan requested to receive an update on the disputes mentioned by the speaker. City Attorney stated he will update Councilmember Moylan.

Harriet Rowe spoke in favor of ADA requirements and asked that the City consider this in the future. Mayor Swegles stated a handicapped committee was formed and will look at all ADA issues.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Mayor Swegles announced that Elizabeth Doig celebrated her 100th birthday on July 10.

STAFF: None

INFORMATION ONLY ITEMS – Received and Filed

- Tentative Council Meeting Agenda Calendar
- RTC 06-227 Board and Commission Quarterly Attendance (Spring 2006) – Information Only
- RTC 06-222 Board and Commission Resignation – Information Only
- Study Session Summary - Joint Meeting with the Housing and Human Services Commission – June 13, 2006
- Draft Minutes of the Bicycle and Pedestrian Advisory Committee Meeting of June 22, 2006

ADJOURNMENT – Mayor Swegles called for a moment of silence in memory of Pat O'Hearn, Retired City Clerk - City of San Jose. Mayor Swegles adjourned the Council Meeting at 12:01 a.m.

Katherine Bradshaw Chapplelear
City Clerk